

# OBSERVATIONS

ON

I. The ANSWER of M. L'Abbé de VERTOT  
to the late EARL STANHOPE's INQUIRY,  
concerning the *SENATE* of *ANCIENT ROME*;

Dated December 1719.

II. A DISSERTATION upon the Constitution of  
*THE ROMAN SENATE*, by a GENTLEMAN:

Published in 1743.

III. A TREATISE on *THE ROMAN SENATE*,  
by Dr. CONYERS MIDDLETON:

Published in 1747.

IV. An ESSAY on *THE ROMAN SENATE*,  
by Dr. THOMAS CHAPMAN:

Published in 1750.

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By Mr. HOOKE. K

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L O N D O N,

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TO  
THE RIGHT HONOURABLE  
ARTHUR ONSLOW  
SPEAKER  
OF  
The HOUSE of COMMONS,

These Thoughts, concerning the Manner of  
Admission into the SENATE of ANCIENT ROME,  
are, with the greatest Respect,  
inscribed.

THE RIGHT HONORABLE

ARTHUR ONSLOW

SPEAKER

OF  
THE HOUSE OF COMMONS

These Thoughts, concerning the History of

Admission into the Senate of Ancient Rome,

are, with the greatest Respect,

intended.



TO THE READER

## The R E A D E R.

**O**NE principal favour, among others, the Author of the following *Observations* takes leave to request of the Reader;

That he will not, from the *seemingly* quarrelsome humour of the *Observator*, conclude him insensible of the superior abilities of those Learned men, whose works he criticises; or so wrong-headed, as to think that a writer's happening *sometimes* to reason weakly and inconclusively, is any proof of his not being an able Reasoner, or a person of true and extensive Learning.

It is further requested of the Reader, that he will be pleased to consider the *Observations*, not as a *Critique* or Censure on those Pieces *only* which are mentioned in the Title-page, but on *all* the *Accounts of the Regal State of Rome, and the first Settlement of the Roman Commonwealth*, which have been given by other modern writers, who have taken *Dionysius of Halicarnassus* for their chief and most trusty Guide; and particularly on the *Histoire Romaine complete* of the Jesuit-Fathers, *Catrou* and *Rouillé*, and the *Histoire Romaine* of *M. Rollin*. The *Observator*, not having any thought of assuming the office of a Censor, when he began to write, what he afterwards called, a *Roman History*, copied the Collections, sometimes of the *Jesuits*, sometimes of *M. Vertot*, and, in so doing, adopted the Tales of *Dionysius*: and, perhaps, had his opinion of the Greek Rhetorician been *then* as contemptuous, as what he has since entertained,  
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## TO THE READER.

he could not have *there* expressed it by a total neglect of the elaborate Fictions and Discussions of so admired a Writer, without incurring the Censure even of persons the most unprejudiced. But as to certain *Connoisseurs* in *Authenticity*, if any of these had condescended to look into that Work, they would doubtless have judged the Author to be guilty of a kind of irreligion, for not revering him, whom *all the best Critics, and most judicious Compilers of Roman Antiquities\**, have constantly worshipped, crying out, on every occasion, as with one voice, *Great is Dionysius of Halicarnassus †!*

Nevertheless, the Author has the boldness to avow, that the chief aim of the following *Observations* is to shew, that this celebrated Historian is a mere Writer of Romance; and that, if any person, who takes pleasure in such Inquiries, and thinks (as Dr. Chapman) that *the manner of Admission into the Roman Senate is a very interesting point, and that he cannot better employ his leisure, than in rescuing it from obscurity*, shall resolve to undertake it, it will be expedient, in order to a consistent Hypothesis, entirely to reject the circumstantial Narratives and critical Discussions of the Greek *Antiquary*. When one considers how generally and how greatly these have been applauded, it naturally brings to one's mind what is said, on a much more important occasion, by a late excellent Writer, concerning the various sorts of Readers of Books — “Not to mention multitudes who read  
“merely for the sake of talking, or to qualify them-

\* See *Observations*, p. 80. 81. 125.

† See the *Testimonia* prefixed to Hudson's Edition of Dionysius.

“ selves



## TO THE READER.

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“ selves for the world, or some such kind of reasons ;  
 “ there are even of the few, who read for their own  
 “ Entertainment, and have a real Curiosity to see  
 “ *what is said*, several, which is prodigious, who have  
 “ no sort of Curiosity to see *what is true*.”

If this was not, in some degree, the temper of those *best Critics* and *most judicious Compilers*, of whom Dr. Middleton and Dr. Chapman speak, how shall we account for their undertaking to build any sort of Edifice on the foundation of Dionysius's Authority, the most injudicious perhaps, and the most inconsistent of all Historians ? And of the like temper we must, I think, unavoidably suppose the Readers of Dr. Middleton's Discourses *on the manner of making Senators, in the early ages of Rome*, to have been : if he be indeed *so generally esteemed* (as Dr. Chapman intimates) *a perfect master of every part of the Roman Constitution*.

The late Lord Hervey not being satisfied with the Answer, which M. Vertot gave to the late Earl Stanhope's Question, concerning *the manner of creating Senators and filling up the Vacancies of the Senate in old Rome*, asked Dr. Middleton's opinion on that matter. The Doctor, as appears by his Letter to Lord Hervey of the 1st of April 1735, had not till just then read M. Vertot's Answer to Earl Stanhope ; and when he did read it, he thought that M. Vertot seemed to perplex the Question, and to reason ill ; and the Doctor, in complying with Lord Hervey's Request, gave (in his own opinion) *a more precise Illustration, than will easily be found elsewhere*, of the Constitution of the Roman Senate.

Dr. Middleton's Treatise,  
p. 1.

p. 5.

p. 13. 29. 54.  
64. 72.

Now,

## TO THE READER.

Now, with regard to the Question, put by Earl Stanhope, the Doctor (to the Apprehension of the *Observer*) is wrong, in almost every particular, where he *differs* from M. Vertot, and wrong in almost every particular where he *agrees*\* with him; and there is hardly, in the Doctor's whole Treatise, a true proposition relative to the subject in debate. When I have said this, I think I ought not to omit giving to the Reader what the Doctor writes in the close of his *Continued Letter* (consisting of several Letters, to Lord Hervey, which, in his Treatise, are *connected into one.*)

p. 106.

" I have now drawn out every thing which I took  
 " to have any relation to my Subject, or to be of any  
 " use toward illustrating the genuin State of the  
 " Roman Senate, from its first institution, to the op-  
 " pression of its liberty: and am persuaded, if I do  
 " not flatter myself too much, that *through every*  
 " *period of its History, under the Kings, the Consuls,*  
 " *and the Censors, I have traced out from the best*  
 " *Authorities, one uniform Scheme of the People's power*  
 " *and absolute right over this Affair, from one end to*  
 " *the other. But as I began my argument with the*  
 " *same notion with which I now end it, so it is possible,*  
 " *that, like all others, who set out with an Hypothesis,*  
 " I might perhaps have a kind of Bias upon me,  
 " without being sensible of it myself; so as to have

\* The most notable instance of this their agreement, is in their interpretation of the words of CICERO (pro Sext. 65) *Deligerentur autem &c.* and of the words of the Tribune, Canuleius, in LIVY, *post exactos reges jussu POPULI.* Lib. 4. cap. 4. See *Observations*, p. 220.

N. B. These passages are the main pillars of the Doctor's Hypothesis.



# TO THE READER.

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" given a greater force to some facts than they will  
" easily bear, in order to draw them to my particular  
" sense †."

As this was written twelve years before the Doctor published his *Treatise*, it is to be presumed he did not, in all that time, discover, that there had been any such bias on his mind, as could make it deviate from the high road to Truth, his sole Object in all his *Treat. p. 107.* Inquiries: And that his *Treatise* contains his maturest thoughts and judgment on the subject, may likewise be presumed, not only from the long space of time between his writing it, and his giving it to the public, but from his calling the *Hypothesis*, therein exhibited, *one uniform scheme*\*, and a *precise illustration*†, though *p. 107.* in reality it be nothing better than *Darkness visible.* † *p. 4.*

ANOTHER favour is asked and hoped from the Reader.—That he will excuse the frequent repetition of certain *Quotations*, occasionally adduced to different purposes. The truth is, *The Observations* want method; they might have been much better digested, if the Author had foreseen how many particulars he should *Treat. p. 3, 4.* be engaged to touch upon, in the Course of his Discussion: But imagining, when he began to write, that

† This modest Discourse, had the Doctor published his *Hypothesis*, when it was first excogitated, would naturally have restrained an Observer from certain liberties, which, in the following sheets, have been used in speaking of it: But the Hypothesis being the result of a long Examination and Research, and, after twelve years, sent abroad to " be of some little Use or Entertainment to the " Curious," the Curious have *freely entertained* themselves with it. And indeed, the Doctor's unprecedented † manner of treating a most justly celebrated, and, on many accounts, very respectable writer, leaves every man free to say, without reserve, what he *thinks* of the Doctor's Hypothesis: even though he should happen to think it a *Heap of Nonsense*.

† See An Examination of the L. B. of L—'s Discourses &c. by Dr. Conyers Middleton.

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## TO THE READER.

he had a full view of all he should say; and having, in his mind, methodized his Thoughts and Arguments, he sent them to the press as fast as they were penn'd. New Thoughts, new Reasons, new Conjectures started up; ancient Testimonies, not remarked before, occurred; and these he had not the skill to insert, without stopping short, from time to time, and thereby making his Discourse somewhat desultory.

One word more shall give a period to this preamble. A very Great man (in all senses) said to the Author, after doing him the honour to read his *Remarks on the History of the Seven Roman Kings*, and his *Dissertation on the Credibility of the History of the first 500 Years of Rome*, "I believe you are right, but I don't care whether you are or no; Why don't you give us *the Third Volume?*" To prevent the like Rebuke from any Reader of the following *Observations*, I take this occasion to signify, that though the said *third volume* was never *promised*, and is not finished, and though the Author has little hope of ever finishing it in such a manner as to satisfy either the public or himself, yet it is his purpose to do his best to please those persons who desire a *Third Volume*; of which no inconsiderable part (already written and revised) will probably be sent to the press before the end of the approaching summer. It is possible, that some persons, of a teizing disposition, may ask, *Why the Author did not finish the Third Volume, instead of losing time in improving his First Volume, and writing critical Observations?* To this, if any considerate and pacific friend of the Author were to answer, he would probably say,



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say, That granting the time and labour, spent in *improving* the *First Volume*, and in *writing critical Observations*, to have been sufficient for the work of a *Third Volume*; the Author may nevertheless be excused, if he judged, That to those Readers, who read with a desire to see what is true or probable, the *Improvements* \* and *Observations* aforesaid would be more acceptable than a *Third Volume* without these; because, in his Opinion, they may, in some measure, conduce to clear up several obscurities in the History, not only of the *earlier* but of the *later Ages* of ROME.

\* In the *Second Edition* of the *First Volume*, the History of the 42 years from the SECESSION to the DECENVIRATE (in which interval SP. CASSIUS made the first Proposal of an *Agrarian Law*; and the Tribune VOLERO prevailed to have *Comitia Tributa* introduced) was, in great part, a new Composition, which placed things in a very different light from that in which they had before been presented. (The Character and Conduct of CASSIUS are vindicated.)

And, in the *Third Edition* of that Volume, some considerable changes and additions (*Improvements*, it is hoped) were made in the History of the Romans from A. U. 357, when they took VEII, to the year 370, when MARCUS MANLIUS, (who preserved the CAPITOL, after the Gauls had burnt the CITY of ROME) was assassinated. (An Examination is made into the true Cause of that implacable Hatred which the SENATE and CAMILLUS bore to MANLIUS; and into the manner of his death.

THE Author imagines, that the account, given in the present *Observations* (p. 57. 58. 59. 64. 65. 66. 67.) of the Rise of the Two FACTIONS, the *Patricians* and the *Plebeians*; with the accounts, given in the *History*, of

The SECESSION of the *Plebeians* and the Institution of the TRIBUNESHIP, A. U. 260;

The First proposal of an *Agrarian Law*, and the Ruin of its worthy Author, A. U. 267, 268;

The Patriotism (fatal to himself) of *Marcus Manlius*, A. U. 369, 370;

The *Licinian Laws*, enacted A. U. 386, which brought the Roman Republic to its FREE and PERFECT state;

The gradual violation, and, at length, total neglect of those Laws, after they had flourished more than 200 years; and the cruel murder of the GRACCHI for their noble attempts to repair, by a revival of those Laws, the Breaches which had been made in the PUBLIC LIBERTY;—may possibly help a young Reader to a clearer view, than he had before, of the foundation of the Roman *Greatness*, and of the Birth, Growth, and Ruin of the Roman *Liberty* and *Virtue*.

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## CONSULAR STATE.

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## ERRATA.

- P. 15. l. 3. The Consuls &c. to the end of the Paragraph, should be marked as a part of the Extract from M. Vertot.
20. l. 11. this work. r. his work.
23. In the note, l. 11, 12. r. as well as.
28. l. 15. dele &c.
33. l. 25. Romulus, is r. Romulus is.
61. l. 23. after *stranger*, add *literally a man from abroad*.
66. In the note, to the words, taken from Dionysius, add the following words from Livy. Eodem anno [453] M. Valerius Consul de Provocatione Legem tulit, diligentius sanctam. Tertio ea tum post Reges exactos lata est, semper à familia eadem. Causam renovandæ sepius haud aliam fuisse reor, quam quod plus paucorum spes quam libertas Plebis, paterant. Lib. 10. cap. 9.
- In the note, Ποταμοί r. Ποταμοι.
68. l. 31. Consequence r. Consequences, the Auspicia and.
73. l. 30. suffer it, r. suffer it to be regulated.
80. l. 34. upon comparison r. upon the comparison.
- l. 35. already preferred, r. universally preferred.
- l. 95. In the note \* συνάδαται r. συνάδαταις.
106. Put into the margin of note \* Cic. de leg. 3.
114. l. 7. διαγινωσκειν r. διαγινωσκουσιν.
120. l. 25. both them r. both these.
177. l. 31. or very near it r. if not more.

OBSER-



# OBSERVATIONS, &c.

**I**N the year 1719 the late EARL STANHOPE, then Secretary of State, sent to M. VERTOT, Author of *The History of the Revolutions that happened in the Government of the Roman Republic*, the following MEMORIAL\*.

“ **M**ONSIEUR L'Abbé de Vertot is desired to communicate to some persons; whom his *History of the Revolutions of Rome* has made curious about every thing that relates to the ancient Government of that Republic, his thoughts upon a point which seems not sufficiently unfolded and explained by those moderns who have treated of the *Constitution of Rome*. The Question is, “ WHAT WAS THE COMMON AND REGULAR MANNER OF ADMISSION INTO the SENATE, DURING THE FOUR OR FIVE FIRST AGES † OF THE COMMONWEALTH? “ It

\* The Memorial and the Answer are at the end of the third volume (third edition) of *Histoire des Révolutions arrivées dans le Gouvernement de la République Romaine*. A Paris 1727.

## M E M O I R E

Envoyé d'Angleterre par My-Lord STANHOPE, Secrétaire d'Etat.

“ **M**ONSIEUR L'Abbé de Vertot est prié de communiquer à des personnes, que son Histoire des Révolutions de Rome a rendu curieuses sur tout ce qui a rapport à l'ancien Gouvernement de cette République, ses pensées sur une chose qui ne paroît point être assez développée par les modernes qui ont traité de la Constitution de Rome. “ Il s'agit de sçavoir quelle étoit la voye commune, et régulière dans les quatre ou cinq premiers siècles de la République, qui donnoit entrée au Senat. “ II

† Dans les quatre ou cinq premiers SIECLES de la République—These are the words of the Original; for the Earl wrote to the Abbé in French. As the Roman

" It is very evident, that in the remotest times of that State,  
 " the Consulship gave him who had been invested with it, a  
 " right to a seat in the Senate during life : and perhaps, in later  
 " times, the Prætorship, and other Magistracies gave the same  
 " right.

" We know, that in the earliest ages, none but PATRICIANS  
 " were admitted into the SENATE; but we would know  
 " exactly, *By what Rule, and by what Authority, some* PATRICIANS  
 " were SENATORS, while a great number of other PATRICIANS  
 " had no share in that honour. Was there any Right to it by  
 " Succession, or Primogeniture? Or had the CENSORS, and,  
 " before the establishment of that Magistracy, the CONSULS the  
 " right

" Il paroît bien que dès l'antiquité la plus reculée de cet Etat, la dignité de  
 " Consul, et peut être même que dans la suite celle de Préteur ou autres, don-  
 " noient à ceux qui en avoient été revêtus, le droit d'assister au Sénat pendant  
 " leur vie.

" On sçait que pendant les premiers siècles il n'y avoit que des Patriciens dans  
 " le Sénat : mais on voudroit sçavoir précisément par quelle règle ou par quelle  
 " autorité de certains Patriciens étoient Sénateurs, pendant qu'un grand nombre  
 " d'autres Patriciens ne participoient point à cet honneur. Y avoit-il quelque  
 " droit de Succession ou de Primogeniture? Ou bien les Censeurs, et, avant  
 " l'établissement de cette magistrature, les Consuls avoient ils le droit d'aggréger  
 " au

man Commonwealth did not, by any reckoning whatsoever, subsist five hundred  
 years, and as his Lordship could not but know that the Plebeians, about one  
 hundred and forty two years after the establishment of the Republic, obtained the  
 Consulship, which, he says, gave a right to a seat in the Senate, it is plain that he  
 does not employ the word *Siæcle* to signify a *Century*, but a shorter space of time,  
 probably a *Generation*; in which sense the word *Seculum* was sometimes used by  
 the ancients. And if we may suppose that his Lordship allowed to a *Generation*  
 thirty-three or thirty-four years (as Sir *Isaac Newton* does) his four or five *first*  
 ages will reach to about the time when the Plebeians had obtained the admission  
 to all the higher Magistracies; by which admission, according to some learned  
 men, they had admission likewise into the Senate. And thus his Lordship's  
 Difficulties, which begin at the Commencement of the Republic, will end about  
 the 172d year of it (year of *Rome* 416) when the Plebeians, having gained access  
 to all the other Magistracies, were admitted to the *Prætorship*.



" right of filling the places, that became vacant in the *Senate*,  
 " with such *Patricians* as they pleased?

" We know, that after [during] the second Punic War, a  
 " *Dictator* was created to replenish the *Senate*, at that time  
 " much exhausted. But this fact, instead of solving our Diffi-  
 " culties, serves only to increase them: For, since, to supply the  
 " vacancies which were then in the *Senate*, the *Romans* had re-  
 " course to that *Extraordinary Power* of the *Dictator*, we might  
 " thence infer, that there was no regular and common Method of  
 " doing it \*.

" If any man in this age is capable, not only of solving  
 " these difficulties, but likewise of giving the *Public* just notions  
 " of every thing that relates to the Establishment of the  
 " Rights and Prerogatives of the *Senate*, and the order of the  
 " *Patricians*, it must be the learned and polite Author of  
 " *The Revolutions of Rome*."

" au Senat tels Patriciens que bon leur sembloit, pour remplir les places qui de-  
 " venoient vacantes au Senat?

" On sçait qu'après la seconde guerre Punique, un Dictateur fut créé pour  
 " remplir le Senat qui se trouvoit epuisé: mais ce fait au lieu de résoudre les  
 " doutes que l'on a sur cette matiere, ne fait que les augmenter; puisque delà  
 " on pourroit inferer qu'il n'y avoit point à Rome de voie reguliere et com-  
 " mune, pour remplacer les pertes des sujets que faisoit le corps du Senat, puis-  
 " que l'on a eu recours à cette puissance extraordinaire du Dictateur.

" Si quelqu'un est capable aujourd'hui non seulement de résoudre ces doutes,  
 " mais encore de donner au Public des Idées justes sur tout ce qui regarde la  
 " Constitution des droits et prerogatives du Senat, et de l'ordre des Patriciens,  
 " ce doit être l'auteur sçavant et poli des *Revolutions de Rome*.

" To this *M. Vertot* answers (p. 447.) " that the Example being extraor-  
 " dinary and singular is the very reason, why nothing can be inferred from  
 " it, against the sole Power of the *CENSORS* to nominate the Senators. Could  
 " any man with reason assert, that it was not the usual and regular practice in  
 " the Republic to chuse the *Tribunes of the Commons* out of the *Plebeians* only;  
 " because in one instance, and when *Valerius* and *Horatius* were Consuls, we  
 " find *Tarpeius* and *Aternius*, Patricians both, and Consulars, brought into the  
 " college of *Tribunes* by co-optation?"

M. VERTOT, in return to the obliging Words that close the foregoing MEMORIAL, writes thus:

Paris, Decemb. 1, 1719.

" I AM laid under an obligation to give my Opinion upon  
 " divers Questions relating to the Constitution of the Roman  
 " Senate; and from a Frenchman is demanded a solution of  
 " difficulties, started in a nation, which, still retaining some  
 " footsteps of the Government of the ancient Romans, ought  
 " consequently to understand it better. And, besides, Who  
 " is more perfectly acquainted with the Civil and Military Dis-  
 " cipline of those famous Republicans, than the learned and able  
 " Minister, and, withal, the Great Captain, who does me the  
 " honour to propose these Questions to me, he from whose  
 " judgment there would have been no appeal, even in the time  
 " of Varro and Tully?"

Anonymous  
 Author of a  
 DISSERTA-  
 TION, &c.

OF all that M. Vertot wrote, in Answer to the MEMORIAL, this polite Compliment to the EARL seems to be the only thing which had the good fortune to please the GENTLEMAN, who in 1743 obliged the public with A DISSERTATION upon the Constitution of the Roman Senate\*. For in the PREFACE to that work he says,—“ Every one who reads at all, must have read the MEMORIAL written by the late Earl Stanhope to the Abbé de Vertot, Author of the Roman Revolutions: In that MEMORIAL his Lordship states several Difficulties relative to the persons, of whom the Roman Senate was composed. This MEMORIAL, that Gentleman answers in such a manner, as shews that, if he did not think those difficulties unanswerable, he left them, at least, unanswered: So that whoever reads his ANSWER to that MEMORIAL, will, I believe, receive very little satisfaction, unless it be in reflecting, that the Praises so liberally bestowed, upon that occasion, by the Writer of that ANSWER, were as eminently deserved by the noble Lord to whom it was written.”

But,

\* This DISSERTATION is annexed to a TRANSLATION of a Fragment out of the sixth Book of Polybius, with notes.



But, though this Author be not content with the *Abbe's* Answers to the *Earl's* Questions, he is too modest to believe, that he himself is able to answer them *fully*, as appears by his very next words. "What I would infer from this, is, that, if a Person, who was so perfectly acquainted with the Civil as well as Military Institutions of the ancients, as the late Earl *Stanhope*; and who had passed his Life in studying the Actions, or following the Example, of the greatest Men of Antiquity; if a Person, I say, so well qualified to decide, could doubt, and the Author of the *Roman Revolutions* not satisfy those doubts, I hope I may be intitled to some indulgence, should not every difficulty, a curious Reader may form to himself, be *fully* answered in *that* DISSERTATION." [The Author speaks of his own Work.] And, in the beginning of the Dissertation itself, after expressing his Wishes, that *Polybius* had not omitted to give us an account of the *Roman* Constitution; because, doubtless, an account of it from him would have cleared up all the difficulties that occur in reading the ancient Authors, he adds.—"This *omission* in *Polybius*, if it deserves that name, has been endeavoured to be supplied by several modern Authors, in several languages; but without giving that satisfaction, which from the great Reputation those Authors had deservedly acquired in other branches of learning, the Public had reason to expect. Whether this proceeded from the Difficulty of the Subject, or from their Want of Attention in treating it, I shall not pretend to determine; but must be so just to their memory, as to own that I attribute it, in a great measure, to the former; particularly, since, *though I have provided myself with many more materials, than have been made use of by any of those Writers, yet there are some points, which I cannot clear up by the Authority of the ancient Authors; for which Reason I chuse rather to submit them to the Consideration of the Learned, than endeavour to establish any System of my own upon unsupported conjectures.*

THE modest despondency of this Gentleman was no discouragement to the brave and enterprising spirit of Dr. *Conyers* Dr. MIDDLETON. *Middleton*, Author of that Marvellous PANEGYRIC, called, *The History*

- History of the Life of M. Tullius Cicero.* Confident of his ability to dispel the clouds which enwrapped the important Subject, the Doctor, for that end, in 1747\*, bestowed on the world A TREATISE on the Roman Senate, being the substance of some Letters, he had formerly written to the late Lord Hervey. His first Letter, (which he gives entire) is introduced with telling us, That Lord Hervey, twelve years before [*i. e.* in the year 1735] asked his Opinion “on the manner of creating Senators, and filling up the Vacancies of the Senate in Old Rome; on which M. VERTOT’S ANSWER to the same Question, when it was proposed to him by the late EARL STANHOPE, had not given him satisfaction †.” The Doctor proceeds. “In compliance therefore with his Lordship’s request, I endeavored to explain the State of the Roman Senate from that time in which the COMMONS of Rome first opened their way to the public honors of the City, till the final oppression of their Liberty, which I observed to be the PERIOD ‡ to which Earl Stanhope’s Question was particularly referred.
- “But my short account of the matter did not answer the Purpose of LORD HERVEY’S Inquiry, nor solve the particular difficulties, which seemed to him to perplex it. He resolved therefore to take the pains of searching into it himself, and of tracing out the Origin and Progress of the Senate from its first Institution by Romulus, down to the Reign of Augustus; the Result of which was, that his Opinion at last happened to differ from mine——”.
- “As the Subject of these Papers has not been professedly treated, by any of the Ancients; nor, in my Opinion, sufficiently explained by any of the Moderns, so I flatter myself, that

\* Though the Doctor tells us, that his TREATISE was conceived and in Embryo so early as 1735, we are here to consider it only from the time it was brought forth in 1747, and as posterior to the Dissertation of the anonymous GENTLEMAN.

† N. B. According to the Doctor’s Representation of Lord HERVEY’S Opinion, (Treat. p. 16.) it was, with regard to the regal State of Rome, the same with M. VERTOT’S, and seems to have differed very little from it with regard to the Consular State, as the Reader will have occasion hereafter to observe.

‡ It will be shewn in some part of the following pages, that the Doctor had not firmly settled in his own mind, what the PERIOD was, to which Earl Stanhope’s Question referred.



7

“ that the publication of what I had collected upon it, in the  
 “ Defence of my Hypothesis, may be of some little Use or En-  
 “ tertainment to the Curious: as it exhibits A MORE DISTINCT  
 “ IDEA, *than will easily be found elsewhere, of the genius of the*  
 “ Roman Government in general, as well as A MORE PRECISE  
 “ ILLUSTRATION of the Constitution of the Roman Senate, &c.

NOTWITHSTANDING this MORE DISTINCT IDEA, and this Dr. CHAP-  
MAN. MORE PRECISE ILLUSTRATION *than will easily be found elsewhere,* the very learned Dr. THOMAS CHAPMAN, not entirely satisfied with Dr. Middleton's TREATISE, has since published a more elaborate and finished Work on the same Subject; though he calls it only AN ESSAY on the Roman Senate. It bears date 1750. I think, I cannot do better than give his own account of it in the words of his Preface.

“ THE author of the following sheets having some years ago,  
 “ as he apprehended, sufficient reason to be dissatisfied with the  
 “ Accounts given by *Hottoman, Manutius, Zamoscius, Vertot* and  
 “ others, of the manner of admission into the Roman Senate,  
 “ thought he could not better employ that leisure which his si-  
 “ tuation afforded him, than in endeavouring to rescue so inte-  
 “ resting a point from the Obscurity and Embarrassment, under  
 “ which it laboured. He saw, with them, *an apparent Incon-*  
 “ *sistence*, even in what the Historians themselves have delivered  
 “ down to us upon the Subject, but, at the same time, was apt  
 “ to persuade himself, that this Inconsistence was *only apparent*,  
 “ and consequently could not but vanish, upon a nearer and more  
 “ attentive view, nor was it long before *he found this to be the Case*  
 “ accordingly; so much so at least, as to satisfy himself and some  
 “ others, upon whose Judgments he thought he might depend.  
 “ He had no other design at first, than to give an account of  
 “ *the manner of Admission into the Senate*: but as, in the careful  
 “ perusal he had found it necessary to give the Historians and other  
 “ Writers, he could not help observing a variety of Particulars,  
 “ which had been but slightly, if at all touched by others; he  
 “ was insensibly led to enlarge his plan, so as to include a full,  
 “ and,

*Observations on M. VERTOT's Answer*

“ and, as he imagined, a complete View of every thing relating to that august Assembly.

“ When he had finished the two first Chapters, [which treat Of the Institution of, and manner of Admission into, the Roman Senate, and of the Qualifications requisite for a Roman Senator] in the manner in which they are here offered to the Public; and made no inconsiderable progress in the four others; Dr. Middleton's TREATISE, consisting chiefly of the Substance of some Letters formerly written to the late Lord Hervey, came from the Press. This he read, not only with that degree of pleasure, which the writings of so fine a pen are apt to inspire, but with a Satisfaction of a more particular nature, which arose from finding his own CONCLUSION, with regard to the manner of Admission into the Senate, CONFORMABLE to that of a Person, so generally esteemed a perfect Master of every part of the Roman Constitution. The PREMISES however, from which it was drawn, were, he saw, a good deal DIFFERENT: the arguments the learned Dr. employed, as well as the Objections he confuted, being such as occurred to himself or his honourable Antagonist, during the short Intervals that probably intervened between the dates of their respective Letters; and not all that would have occurred to him upon the point, if he had sat down at first, with a design of giving the World a full and satisfactory account of it.

“ Hence the Author did not perceive his design greatly anticipated by the former part of the Doctor's work, &c.—”

[N. B. This former part treats Of the manner of creating Senators, and filling up the vacancies of that Body in old Rome.]

HAVING thus, from the four Authors themselves, given some account of the occasion and origin of the Discourses by them published on the Subject in Question, I come now to consider their several Hypotheses, with the Arguments and Authorities by which they have endeavoured to support them.

THE French Gentleman, in the order of time, is the first of the four. Let us begin therefore with his Hypothesis, and then see in what particulars the three subsequent Writers, who have so unanimously rejected it, differ from him.



M. VERTOT introduces his ANSWER to the MAIN QUESTION, in Earl Stanhope's Memorial, viz. *What was the common and regular manner of admission into the Roman Senate, &c?* with saying,—“ Though the Author places his difficulties in the “ four or five first Ages of the Commonwealth, we do not think “ that they reach so far ; it appears to us however, that they cannot “ well be cleared up, without looking back to the very foundation of ROME, and the first Establishment of the SENATE.” His reason for this retrospect seems to be, That the *first Consuls*, who succeeded the KINGS in the Government of Rome, are represented, as possessed, during the Year of their Magistracy, of all the Powers which had belonged to those Kings\*. If therefore we find, that *To create Senators* was a part of the Royal Prerogative, we are to suppose, that the *first Consuls* had the same privilege.

M. L'ABBE  
DE VERTOT.

See *Reponse  
au Memoire*  
p. 442.

Now our Author thinks it evident,

THAT, during the *Regal State* of Rome, the KINGS, by their sole Authority, did dispose of all the vacant Places in the Senate.

THE REGAL  
STATE.

His Reasons are these.

1. LIVY tells us, that *Romulus* CREATED the first Senators, the whole hundred. *Quum jam virium baud paeniteret, Consilium deinde viribus parat. Centum CREAT Senatores.* Lib. I. c. 8.

Rep. p. 432.

2. *Plutarch* ascribes the same Creation to King *Romulus*.

3. It is King *Tullus Hostilius* who, after the Destruction of *Alba*, admits the chief Families of the *Albans* into the Roman Senate. Liv. I. I. c. 30. *Principes Albanorum in Patres, ut ea quoque pars Reipublicæ cresceret, legit, templumque ordini ab se aucto curiam fecit.*

Rep. 435.

4. “ When *Tarquin the Elder*, contrary to custom, brings into “ the Senate 100 PLEBEIANS, the *Latine Historian* tells us, that “ this was the Prince's own doing ; that those hundred *Plebeians* “ were admitted into the Senate only by his favour. *Centum “ in Patres legit, qui deinde minorum Gentium sunt appellati.*

Rep. p. 436.

\* Libertatis originem inde magis, quia annuum imperium consulare factum est, quam quod deminutum quicquam sit ex Regia potestate, numeres. Omnia jura, omnia insignia primi Consules tenuere. Liv. I. 2. c. 1.

" Lib. 1. c. 25. He adds, doubtless they would be a Faction  
 " devoted to the King, by whose favour they had obtained  
 " admission into the Senate." *Factio haud dubia regis, cujus*  
*beneficio in Curiam venerant.*

Rep. p. 437.

5. Agreeably to this, when *Tarquin the Proud* (Son of the first *Tarquin*, according to *Livy*) was plotting to usurp the Crown (then on the head of *Servius Tullius*) he addressed himself chiefly to the Senators of his Father's Creation, putting them in mind of their Obligation to his Father, and requesting now a suitable Return on their part. *Circumire et prebenschare Minorum maxime Gentium patres, admonere paterni beneficii, ac pro eo gratiam repetere.* Lib. 1. c. 47.

Rep. p. 438.

6. And *Livy* tells us, that when this Usurper had seated himself on the Throne, and had murdered or banished all those of the Senators, whose Inclinations he suspected, or whose Fortunes he desired to possess, *he resolved, not to supply their vacant places with new Members*, because he would have that Order grow contemptible by the small number of its Members; and because the less danger would arise to him, (when they were but few) from their anger at being wholly excluded the management of public affairs. *Patrum præcipue numero imminuto, Statuit nullos in patres legere, quo contemptior paucitate ipsa ordo esset, minusque per se nihil agi indignarentur.* Hic enim regum primus traditum a prioribus morem de omnibus Senatum consulendi solvit. Domesticis conciliis Rempublicam administravit. Bellum, pacem, fœdera, Societates, per se ipse cum quibus voluit, injussu Populi ac Senatus, fecit, diremitque. Lib. 1. c. 49.

Rep. p. 439.

Y. of R. 308.  
Fast. Cap.

7. *Livy* confirms the Conclusion, which, from these several Facts, is deducible in favour of the Royal Prerogative, by the words which he puts into the Mouth of a *Tribune*, named *Canuleius*, who was for repealing one of the Laws of the TWELVE TABLES, which forbade all marriages between *Patricians* and *Plebeians*. The *Tribune* speaks to the *Patricians* in words to this effect: " You hold not that *Nobility* of yours by Extraction and  
 " Blood [nor are you descended from the 100 Senators of  
 " *Romulus*] most of you are sprung from *Alban* and *Sabine* An-  
 " cestors, who were either by the Choice of our Kings, or, af-  
 " ter the Expulsion of the Kings, by the Authority of the People,  
 " received



“ received among the Senators, the PATRES. [by that reception  
 “ they became PATRES; and you, their Offspring, are therefore  
 “ called PATRICIANS, the title given, for the same reason, to  
 “ the Descendants of the 100 Senators of Romulus, the first  
 “ PATRES] Nobilitatem istam vestram, quam plerique oriundi  
 “ ex Albanis et Sabinis, non Genere, nec Sanguine, sed per Coop-  
 “ tationem in Patres habetis, aut AB REGIBUS LECTI, aut, post  
 “ Reges exactos, JUSSU POPULI. Liv. l. 4. c. 4.”

The words CHOSEN BY THE KINGS, *lecti ab Regibus*, M. Vertot thinks are decisive for the Prerogative of the KINGS to create Senators.

He remarks, That LIVY in his History of the Roman Kings is a Royalist throughout, that he never departs from this Character; that the Kings, according to the *Latine* Historian, have the sole and absolute disposal of whatever concerns the Senate. Rep. p. 435. 436.

And M. Vertot farther remarks, that though Dionysius, even under the Royalty, appears a Republican, representing, in many parts of his work, the Kings as nothing more than the Heads of the Senate, yet, that by some Facts which he relates, he much weakens the force of his own Testimony. M. Vertot admits,

That Dionysius does expressly ascribe to the PEOPLE the Choice of 99 of the 100 Senators of Romulus, giving to the King the Nomination of only ONE, who was to be President of the Assembly. Rep. p. 433.

That he gives to the same PEOPLE the Choice of the 100 Sabine Members, who (according to him) were added to the Senate after the Union of Romulus and Tatius. Rep. p. 434.

That he likewise represents the Admission of the principal Alban Families into the Senate, in the Reign of King Tullus Hostilius, as the ACT OF THE PEOPLE. Rep. p. 435.

But though Dionysius, by these particulars, manifestly appears to be on the side of the People in the present Question; yet M. Vertot does not think his Authority decisive. He considers him as byassed by his *Græcian* Politicks in the account he gives of the Regal Government of Rome; and moreover observes (as I mentioned before) that the *Greek* Historian, notwithstanding his Prejudices, relates some Facts that very much favour the Royal Prerogative with regard to the Creation of Senators. For, even ac- Rep. p. 434.

*Observations on M. VERTOT's Answer*

Rep. p. 433. cording to him, It is KING Romulus alone, who forms the Design of creating a Senate,

It is the KING, who of his own Authority names the Prince or President of it;

And, though the Tribes and the Curia elect the other 99 Senators, it is only in Consequence of the express order and Command of the KING.

Rep. p. 434. So likewise, though the choice of the Sabine Senators be left to the Curia, yet, after the Election of those new Members, it is by the Authority of the two KINGS, they are admitted into the Senate.

Rep. p. 438. And again, though DIONYSIUS (contrary to the express Testimony of LIVY) affirms that Tarquin the Proud did, in a manner, create a NEW SENATE, filling with his own Creatures, the Places of those Senators he had murdered or banished, yet (says M. Vertot) nothing appears, in either of these Historians, that derogates from the Right and Prerogative of the KINGS: For whether Tarquin forbore to substitute other Senators in the place of the murdered and banished, as Livy reports; or whether he supplied the vacancies with his own Creatures, as Dionysius will have it, still it is THE AUTHORITY OF THE PRINCE, AND THAT ALONE, which by both Historians is spoken of, on this occasion; and that is the sole point in Question with regard to the Nomination of Senators.

M. VERTOT might, in support of his own Hypothesis, have added,

1. That Dionysius, speaking of the good Reception which Tarquin the Tuscan, at his first coming to Rome, met with from King Ancus Martius, tells us, That the KING made him a PATRICIAN and a SENATOR.

2. And that, in the Account which DIONYSIUS gives of the Creation of 100 new Senators by that same TUSCAN, when raised to the Throne, no \* mention is made of the PEOPLE; but all seems to be done by the sole Authority of the KING.

THUS

\* Lord Hervey employed this Argument against Dr. Middleton, as we see by the Doctor's TREATISE, p. 29, 30. "But your Lordship here remarks, that "Dionysius himself ascribes this Act to the Prince, without any mention of the "people: To which I answer, That after he had precisely and frequently explained the whole process of filling up the Senate, might he not think it need-  
"less



THUS far with regard to the *KINGS of Rome*.

M. Vertot we see attributes to them the sole exercise of the power of making Senators: and he is of opinion that the CONSULS succeeded to the KINGS, and the CENSORS to the CONSULS in the Execution of the same Power.

CONSULAR  
STATE.

NEVERTHELESS when he comes to speak of the *Consular State*, (the beginning of which Earl Stanhope had made the Epoch and beginning of his Difficulties) he freely grants, that the Right of electing Senators in those times, is attributed wholly to the People † by CICERO and LIVY, the two most celebrated Writers in the *Roman Republic*. For

Rep. p. 440.

Cicero (Pro Sext. 65) speaks thus. "When our Ancestors would no longer endure the Yoke of Kings, they created Annual Magistrates, so (*i. e.* with power so limited both in degree and duration) as to make the SENATE the perpetual Council to

" *preside*

" less to repeat the ceremonial on every occasion? Might he not imagine, that what he had before so particularly described, would be applied to every subsequent Case of the same kind? And when he had once settled this point, was it not natural for him, like all other Writers, and for the sake of brevity to impute the Act done in Consequence of it, to the principal mover and Director of it? Since Dionysius, then the most accurate of the Roman Historians, and who treats the particular Question under debate more largely and clearly than any of them, is expressly on my side; and since *all the rest*, [that is to say, LIVY alone, in reality, according to the Dr. p. 21.] "who seem to differ from him, touch it but slightly and incidentally, nor yet absolutely contradict him; I cannot help thinking, that as far as Authority reaches, my Hypothesis must appear to be better grounded, than your Lordship's."

The Dr. seems here to have forgot what he had told us, p. 22, that LIVY is not only silent concerning the *Augmentation* of the Senate (by the addition of 100 *Sabines*) upon the Union between *Romulus* and *Tatius*, but expressly contradicts DIONYSIUS. And, I suppose, that the Dr. would have allowed therefore, that LIVY is, at least in this Instance, a *Positive Evidence*, and not a *meer Evidence of the Negative kind*, (p. 20.)

As to the *Accuracy* of the *Greek Historian*, we shall have occasion to speak of it more than once; and as to his treating the present Subject more largely and clearly, than any other, it must surely, to any one who considers the thick and impenetrable clouds with which, by his own Confession, these old transactions were covered, be a proof, not of the *fidelity* of the Historian, but of his want of it.

† I conceive, that M. Vertot need not have granted that these two celebrated Writers attribute the Election of Senators, in the time of the Commonwealth, wholly to the *People*. This point will be discussed when we come to Dr. Middleton's TREATISE.

*Observations on M. VERTOT's Answer*

" *preside* over the Republic: But of this Council THE WHOLE  
 " PEOPLE were to *chuse* the Members; and the way into that  
 " highest Order (the Senatorian) was to be left open to the In-  
 " dustry and Virtue of every private Citizen. \* "

Vid. Supr. p.  
 no. 11.

The Passage in *Livy* to which M. *Vertot* refers is that already cited from the Speech of the Tribune *Camilleius*. As M. *Vertot* maintains that the Words CHOSEN BY THE KINGS, *lecti ab Regibus*, do greatly favour his notion of the Regal Prerogative, so he candidly owns, that the words BY THE COMMAND OR AUTHORITY OF THE PEOPLE *jussu Populi*, are against him with regard to the Consuls and Censors. But he adds, That the FACTS and EXAMPLES, recorded by *Livy* himself, are directly against the Notion of the PEOPLE's chusing the Members of the Senate.

Rep. p. 441.

For BRUTUS, when sole Consul, is represented, by *Livy*, as filling up, by his own Authority, the many vacancies of the Senate with new Members, chosen from among the Knights. Cædibus deminutum patrum numerum ad trecentorum Summam explevit.

And M. *Vertot* observes, that though *Dionysius* makes the Creation of Senators at that time to be the joint act of *Brutus* and *Valerius*, and though *Plutarch* makes it to be the act of *Valerius*, when sole Consul, yet there is nothing in any one of the three Historians, that favours the Right of the People: It is still a Consul that nominates the Senators; and, as to the main Question, 'tis indifferent whether his name be *Brutus* or *Valerius*.

This is the only example cited by M. *Vertot* of a Creation of Senators by the Consular Authority; but he adds, " it is very probable, that the Consuls, whose authority differed not from that of the Kings, but in being divided and annual, succeeded

\* Hæc est una via, mihi credite, et laudis et dignitatis et honoris, a bonis viris, sapientibus et bene natura constitutis, laudari et diligi: nosse descriptionem Civitatis a majoribus nostris sapientissime constitutam: qui cum regum potestatem non tulissent, ita magistratus annuos creaverunt, ut Consilium Senatus reipublicæ preponerent Sempiternum: deligerentur autem in id Consilium AB UNIVERSO POPULO, aditusque in illum summum ordinem, omnium civium industria, ac virtuti pateret. *Cicero*, pro Sext. 65.

N. B. *Hottoman* and *Grævius* are for reading Ex universo populo, not AB, &c. Dr. *Chapman*, p. 74. thinks they have not given sufficient reasons for this; we shall hereafter see whether Ex may not be supported.



"ceded to the right, those Princes had enjoyed, of supplying  
"the vacancies of the Senate."

The CONSULS being afterwards too much taken up with wars, which often kept them from Rome, the right of nominating Senators fell gradually from them to the Censors, a Magistracy created in the Year of Rome 310, and intended at first only to free the Consuls from the Burthen and Care of the Census.

THAT the CENSORS had the Prerogative of making Senators without the Concurrence of the PEOPLE, M. Vertot infers from two facts recorded by the Latine Historian.

In the year 441, Appius Claudius and C. Plautius, Collegues in the Censorship, having filled the vacant Places in the Senate with the Sons of FREED-MEN, the Consuls of the following year, C. Junius and Q. Aemilius, moved with Indignation at the unworthy Choice, annulled that Election and made a new call of the Senators according to the ROLL as it was, before the Magistracy of those CENSORS. Rep. p. 454.

In the year 537, the Romans having suffered from the Carthaginians four great Defeats, and the Senate, by the loss it had sustained in those Battles, being greatly thinned, the Fathers turned their thoughts to a supply of Members. The two last CENSORS had probably been killed, or were out of Office, and the present DICTATOR, M. Junius Pera, who might have done the business, was then at the head of an Army against Hannibal. In these Circumstances the Fathers sent for the Consul Varro to Rome, and directed him to name a second DICTATOR, who should perform the Function of the CENSORS; "and it was agreed, (says M. Vertot) in order to preserve as much as possible the ancient form of Government, that the Consul should name the oldest of the CENSORIANS, so that, when Varro nominated M. Fabius Buteo to the Dictatorship he could not so properly be said to give the Republic a DICTATOR, as the first and oldest of the CENSORS. And, to make this new Magistrate sensible that he had nothing of the Dictatorship but the name, he was expressly forbid to appoint a General of the Horse, a Prerogative inseparable from the Dictatorship." Rep. p. 448.

The new Dictator, in his speech, on this occasion, to an Assembly of the People, declares, that he cannot approve the many

irregu-

irregularities in his appointment to the office he then held; and among others, he mentions these; *That ONE Citizen should do the business of TWO Censors, and that the Censorship should, contrary to custom, be twice given to the same person*; which shews, that he considered himself as a meer CENSOR, and acting the proper part of a CENSOR.

The choice he made of 177 persons, to fill the vacancies of the Senate, was so prudent and impartial, as to give great and universal satisfaction. *Centum septuaginta septem, cum ingenti approbatione omnium, in Senatum lectis &c.* A proof (adds M. Vertot) that this choice was wholly his own work. For if the nomination of the Senators had been made by THE PEOPLE, it would have been ridiculous to praise the DICTATOR for it. Neither *Fabius Buteo* would have deserved the applauses he met with, nor *Appius Claudius* and his Collegue the blame and reproaches that were thrown upon them, if the appointment of persons to fill the vacancies of the Senate had depended on the voices of the Multitude.

Rep. p. 444,  
453.

M. Vertot's CONCLUSION from the whole of what he can find in the Historians of Rome is, *That the CENSORS succeeded the CONSULS in the Right of nominating the SENATORS, as the CONSULS before had succeeded the KINGS in the same prerogative* \*.

Rep. p. 445,  
446.

NEVERTHELESS he does not wholly exclude the PEOPLE, in the times of the Commonwealth, from the Privilege of INDIRECTLY creating SENATORS; in as much as he holds, That all the CURULE MAGISTRATES had seats in the Senate, not only during the year of their Magistracies, but after the Expiration of them; and that the CENSORS, when they made up the roll of the Senators, were *indispensibly OBLIGED* to insert therein the names of those Magistrates, each according to his rank. Now,

\* M. Vertot takes notice here of the Opinion of *Paulus Manutius*; That the KINGS, the CONSULS and the CENSORS, had indeed the right of PROPOSING to the Assembly of the People, such Candidates as they thought worthy to fill the vacancies of the Senate, but that the ELECTION was in the PEOPLE; whose Choice however was confined to those Candidates. "A Conjecture (says M. Vertot) founded on no proof, unless we will allow the Custom in the Republic of admitting no magistrates but by way of Election to be a proof." And then he speaks of the right which the Curule Magistrates (who were all made by Election) had to sit in the Senate.



as it was only by the Choice and Suffrages of the PEOPLE that any Citizen could rise to those honourable Offices, which are here supposed to give a Right of sitting in the Senate, it is plain, that every Citizen, so promoted, did, in reality (if not a Senator before) owe his Senatorian dignity to the PEOPLE. And it is to this INDIRECT Election of Senators by the PEOPLE, that M. Vertot would restrain the meaning of CICERO's words, DELIGERENTUR AB UNIVERSO POPULO, (in orat. pro Sext.) and LIVY's words JUSSU POPULI in the Speech of Canuleius, the Tribune, Lib. 4. c. 4.

Vid. Supr.  
p. 14.  
Vid. Supr.  
p. 11.

M. VERTOT proceeds to Earl Stanhope's Second Question. *By what rule or by what Authority [in the four or five first Ages of the Republic, during which the Earl supposes, that the SENATE consisted of Patricians only] some Patricians were SENATORS, while a great number of other Patricians had no share in that honour? Was there any right to it by Succession or Primogeniture? Or did the CENSORS, and, before the Establishment of that Magistracy, the CONSULS, supply the vacancies of the Senate with such PATRICIANS as they chose?*

Answer to E.  
STANHOPE's  
Second Quest.  
Rep. p. 455.

IN answering this Question M. Vertot recurs to the Origin of the PATRICIANS, according to LIVY's account.

"When Romulus (says the Latine Historian) had acquired strength, he, in order to provide Counsel to direct his strength, created 100 Senators, either because that number was sufficient, or because there were (among his followers) no more, that could [with propriety] be created PATRES, Fathers, i. e. be made Senators or Counsellors. These PATRES (he adds) were certainly so called out of reverence; and their Offspring were called PATRICIANS."

Rep. p. 456.  
and 432.

"Such was the Origin (says M. Vertot) of the highest and clearest Nobility among the Romans. Some Authors relate, that the first PATRICIANS wore Crescents upon their Shoes; others say the Letter C. to shew, that they descended from the

\* Quum jam virium haud poeniteret [Romulus] Consilium deinde Viribus parat. Centum creat Senatores, sive quia is numerus satis erat, sive quia soli centum erant qui creari PATRES possent. PATRES certè ab honore, PATRICIUM progenies eorum appellati. Lib. 1. c. 8.

*Observations on M. VERTOT's Answer*

Rep. p. 457. "C. i. e. 100, first Senators. The Children and Posterity of those Senators quickly multiplied into different Branches of Patricians. And from this Body alone were chosen, at first, the Senators, the Priests and all the principal Ministers of Religion. But these Employments and especially the Dignity of Senator did not devolve by right of Succession. Indeed, to be a PATRICIAN was requisite, in order to be a SENATOR: But it was impossible that ALL the Patricians should be Senators; because the number of the Patricians very soon exceeded the fixed number of Members of which the Senate was composed."

Rep. p. 458, 459. And M. Vertot adds, "That in a very short time, the KINGS ceased to confine themselves scrupulously, in their Choice of Senators, to the Blood of the first Patrician Families, (i. e. to the Descendants of the 100 Senators of Romulus.) They admitted Strangers, and Plebeians, (if they found them worthy) into the Senate. But then, to avoid an open Violation of the Custom of admitting no man into that Assembly, who was not before a Patrician, they first gave the Title of Patricians to such Strangers or Plebeians as they purposed to raise to the Senatorian Dignity. Thus Ancus Martius first declared Tarquin the Tuscan, (who was his prime Favourite) a Patrician, and then made him a SENATOR."

"And so likewise, when that same Tarquin, risen to the Throne by the favour of the People, [that is of the Plebeians] had, to preserve their Affections, determined to bring 100 Plebeians into the Senate, he, to soften the matter, and not shock too violently the Patrician Body, by such a Novelty, began by giving to those 100 PLEBEIANS, the name of PATRICIANS, a method (says M. Vertot) of conferring Nobility, i. e. of making Gentlemen."

Rep. p. 460. "But these Distinctions ceased among the Romans, soon after the expulsion of the Kings." And then he cites Dionysius in proof, "That the Plebeians, taking advantage of the Banishment of Coriolanus, about the year of Rome, 260, introduced themselves into the Senate and shared with the Patricians the Dignities, that had been appropriated to the First Order of the Republic."

262 Fast. Cap.



" The *Knights* were originally a part of the *people* [the *Plebeians* \*] Rep. p. 462.  
 " but the most considerable part; as the *SENATORS* were taken out  
 " of the *Body* of the *PATRICIANS*, † and, by their Senatorian Dignity, were the most considerable of that Order. But when all the  
 " Orders of the Republic were become common to all the *Citizens*,  
 " it was *WEALTH* alone that gradually and insensibly made the Distinction between them. It was determined how much a Citizen  
 " should be worth to be enrolled among the *KNIGHTS*, or, being a  
 " *KNIGHT*, to be qualified for a Seat in the *SENATE*. *Senatorum gradum* (says *Seneca*) *census ascendere facit*. The *Patricians*, no  
 " less than the other *Citizens*, were subjected to these Regulations;  
 " and, whatever merit they might otherways have, the Goods of  
 " fortune decided their Rank. Such young *Patricians* as happened  
 " to be *rich*, were placed in the Order of *Knights*, from whence the  
 " *CENSORS* afterwards chose out the most worthy to raise them to  
 " the Dignity of *Senators*; and those poor *Patricians*, who had not  
 " wealth enough to be taken into the *Equestrian* Order, or to be admitted into the *Senate*, remained mingled with the common People; while they saw *Plebeians*, because wealthy, adorned with the  
 " *Gold Ring* (the Badge of their *Knighthood*) or habited in the *Laticlave*, and seated among the *Fathers*. *Senator non es* (says *Onuphrius Panvinius*) *ergo Eques, aut de populo: neque Senator, neque Eques, quamvis Patricius, ergo de populo; ordo enim præterea nullus superest.*"

We see, by the foregoing Passages,

1. That M. *Vertot* wholly denies the *Fact*, which Earl *Stanhope*, taking it for a certain Truth, makes the Ground of his *Second Question*. The *Fact*, I speak of, is, That in the first Ages of the *COMMONWEALTH*, the *Senate* consisted only of Persons who were, by birth, *PATRICIANS*.

2. That, as to the *Question* itself, viz. Why all the *Patricians* were not *Senators*? the Answer is, That it could not be; because the *Patricians* exceeded the number to which the *Senators* were limited.

\* It could not be otherwise, if *Livy's* Account be right. For when the *Knights* were first created, there were no *Patricians* existing, that could be made *Knights*. There were 100 *Patres*, but their Children, the *Patricians*, were not of an age for *Knighthood*.

† That is to say, were taken out of the Children of the 100 first *Senators*, when those Children were grown numerous and old enough to supply the Vacancies of the *Senate*.

*Observations on M. VERTOT's Answer*

SOME particulars in what has been cited above, from M. Vertot's ANSWER to the *Second Question*, induce me to take notice of what he says in p. 431.

" If we will believe the greater number of the Historians, it  
 " was first the **KINGS**, and afterwards the **CONSULS** and **CENSORS**,  
 " who disposed of the vacant places in the Senate. According to  
 " other Authors, the **VOTES** of **THE PEOPLE** were necessary to  
 " that Promotion; and *what increases the difficulty*, is, That not  
 " only this Diversity of Opinion is found in different Historians,  
 " but oftentimes the same Writer seems to contradict himself in dif-  
 " ferent parts of this Work."

I would remark, that the latter part of this Observation has no Foundation in Livy's account of the Regal State of Rome, if the Observer did not mistake, when he told us, " that the *Latine*  
 " Historian, with regard to the Prerogative of creating Senators,  
 " is a Royalist throughout." Nor do I believe, that Livy is in-  
 consistent with himself in any instance that regards the point in  
 Question. But I conceive that our ingenious Modern has now  
 and then perplexed himself, by not adhering closely to Livy, but  
 quitting him to follow *Dionysius*; and by sometimes attempting  
 to blend two Accounts, that will by no means kindly unite.

For example,

LIVY makes the first PATRICIANS to be the Children of the 100  
 PATRES, the first SENATORS of Romulus.

*Dionysius* tells us, " That Romulus distinguished, by different  
 " Appellations, those of his Followers who were *illustrious by their*  
 " *Birth, renowned for their Virtue, abounding in Wealth, and had*  
 " *Children*, from those who were *obscure, low born and poor*. That  
 " the latter he called **PLEBEIANS**, the former, **PATRES** (*Fathers*)  
 " either because they surpassed the rest in years, or because they  
 " had children, or because they were nobly born, or for all these  
 " reasons.

" That the Writers, who relate things the most probable con-  
 " cerning the Roman State, say, that those men were, for the rea-  
 " sons mentioned, called **PATRES**, and *their offspring* **PATRI-**  
 " **CIANS**; but some envious Writers, who falsely object to the  
 " Romans a contemptible origin, pretend, that the **PATRICIANS**  
 " were



" were so called, not for the reasons above given, but because they  
 " were the only persons that could tell, who their fathers were \*."

After this division of the People into two sorts, the King, by  
 LAWS, assigns to each their employments. The *Eupatridai*, (which  
 appellation the Historian has just before used, as equivalent to  
 PATRES, not to PATRICII) are " to officiate in holy things, bear  
 " offices, dispense justice, share, with the King, the administra-  
 " tion of the public affairs, and regulate the *Police* of the City.  
 " The PLEBEIANS being, through their ignorance and indigence,  
 " unqualified for those functions, are to cultivate the lands, feed  
 " cattle and follow trades." And that so invidious a distinction  
 may not breed ill blood, *Romulus* contrives to form a friendly union  
 between the two orders by the institution of the PATRONAGE.

Thus much (if not true) is intelligible, and *Dionysius* seems to  
 agree with *Livy* concerning the derivation of the word PATRICIAN.

But now, who would imagine, that the PLEBEIANS should be  
 directed to chuse their PATRONS, (who were to be their advisers  
 in all difficult affairs) out of the PATRICIANS, that is, out of the  
*Children of the PATRES*? And that when the King came to form  
 a SENATE † of a hundred wise Men, these likewise were chosen  
 out of those Children? This will by no means accord with *Livy's*  
 account, or with common sense.

Nevertheless, it would seem, that M. *Vertot* was disposed to  
 believe both. For, after adopting *Livy's* Origin of the *Patricians*,  
 namely, *That they were the Children and Descendants of the* 100 Rep. p. 457.

\* Τους επιφανεις κατὰ γένος καὶ δι' ἀρετῆς ἐκαινεμένους, καὶ χρημάτων, ὡς ἐν τοῖς D. H. p. 83.  
 τότε καιροῖς, εὐποροῦς, οἷς ἤδη παῖδες ἦσαν, διαρίζεν ἀπὸ τῶν ἀσημάτων καὶ ταπεινῶν, 84.  
 καὶ ἀπορων. ἐκάλει δὲ τὴν μὲν ἐν τῇ καλλοδιεφερέῃ τύχῃ, Πληθεύς, ὡς δ' ἀν' Ἕλληνας  
 εἰποιεν, δημοτικὸς τὴν δ' ἐν τῇ κατ' ἄλλου, Πατερὰς, εἴτε διὰ τὸ πρεσβεύειν ἡλικία  
 τῶν ἄλλων, εἴθ' ὅτι παῖδες αὐτοῖς ἦσαν, εἴτε διὰ τὴν ἐπιφάνειαν τοῦ γένους· εἴτε διὰ  
 πάντα ταῦτα· ἐκ τῆς Ἀθηναίων πολιτείας, ὡς ἀν' τις εἰκάσειε, τῆς κατ' ἐκεῖνον τοῦ  
 χρόνου ἐπὶ διαμενέσης, τὸ παραδειγμα λαβὼν. ἐκεῖνοι μὲν γὰρ εἰς δύο μέρη νεύσαντες τὸ  
 πλῆθος, Εὐπατρίδας μάλλον ἐκάλουν τὴν ἐκ τῶν ἐπιφανῶν οἰκῶν, καὶ χρημάτων δύνατες,  
 οἷς ἢ τῆς πόλεως ἀνεκείτο προέσσια·—οἱ μὲν δὲ τὰ πικρὰ καὶ ἀπὸ τῆς Ρωμαίων  
 πολιτείας ἰσορῶντες, διὰ ταύτας τὰς αἰτίας κληθῆναι φασὶ τὴν ἀνδρῶν ἐκεῖνων Πα-  
 τέρων, καὶ τὴν ἐκ γένους αὐτῶν Πατρικίων· οἱ δὲ πρὸς τοῦ ἰδίου φθόγου ἀναφέροντες τὸ  
 πρᾶγμα, καὶ διαβάλλοντες εἰς δυσγένειαν τὴν πόλιν, καὶ διὰ ταῦτα Πατρικίους κληθῆναι  
 φασιν, ἀλλ' ὅτι πατέρων εἶχον ἀποδείξαι μόνοι.

† Ο δὲ Ρωμύλος ἐπειδὴ ταῦτα διεκοσμήσει, βεβηλὺς ἐνθὺς ἐγὼ καταστήσασθαι, p. 85.  
 μετ' ὧν πρᾶττειν τὰ κοινὰ ἐμελλεν, ἐκ τῶν πατρικίων ἀνδρῶν ἑκάστον ἐπιλεξάμενος.

first

*Observations on M. VERTOT's Answer*

*first Senators, styled PATRES*, he adds, "Ces enfans et ces descen-  
dans des cent premiers Senateurs se multiplierent bientôt et pro-  
duisirent différentes branches de Patriciens. *C'est de ce corps seul,*  
qu'on tira d'abord les Senateurs, &c."

Doubtless, our Author, by *on tira d'abord*, &c. meant only, that so soon as the Children of the first 100 Senators were of an Age to sit in the Senate, the Vacancies, which from time to time happened in that Assembly, were supplied from them. But this could not be during the Reign of *Romulus*. He was dead (probably, many Years) before the Children of his 100 Senators were old enough for the respectable Title of *PATRES*. For it is to be noted, that *Dionysius's* worthy and illustrious Gentlemen, the first  
Liv. l. 1. c. 9. Senators, are represented by *Livy*, as having no Wives, when they commenced Senators; which want, and the contemptuous refusal they met with, when they sued to the neighbouring petty States for Women, put them upon stealing the *Sabine* Wenches; of whom the handsomest were carried to the Houses of the principal *PATRES*, all old Batchelors. *Dionysius* indeed (that § diligent and accurate  
§ Middleton's  
Treat. p. 20,  
§ 30, 34. Historian, who searches things to the bottom) is of opinion, that it was not for want of Wives, as the malicious Enemies of the Roman Name [such as *Livy* and all the Roman Writers] pretend, that *Romulus* and his highborn worthy Followers did violence to the Daughters of the *Sabines*: But the grave Historian, after pondering the matter with all his Wisdom, judges, that they treacherously seized and forcibly carried off the Girls, with no other View than to make a friendship with their Fathers; because Intermariages are a source of Friendship\*.

But to return to *M. Vertot*. This agreeable Writer has, perhaps, no less than *Dionysius* himself, those marks of a superior Genius, To be negligent, and inconsistent, and quick at supplying, out of his own Invention, whatever is wanted to compleat a Story.

Vid. Supr.  
p. 9.

1. Through meer inattention he makes *Livy* say, that the 100 new Senators, created by *Tarquin the Elder*, were taken from the

\* Πολλων περιουκνῶν τὴν πόλιν ἔθναν, μεγάλων τε καὶ τὰ πολέμια ἀλκιμων, ὧν ἔδει πρὸς τοῖς Ῥωμαίοις φίλον, οἰκισθῆναι ταῦτα βουλθεὶς ἐπιγαμίας· ὥστε ἰδοὺ τοῖς παλαιοῖς εἶναι τρόπον βεβαιωτάτος τῶν συναπλοῦν φίλιας, &c. p. 99.

Τῆς τε ἀρπαγῆς τὴν αἰτίαν οἱ μὲν εἰς σπάνιν γυναικῶν ἀναφέρουσιν· οἱ δ' εἰς ἀφορμὴν πολέμου· οἱ δὲ τὰ πιθανώτατα γράφοντες, οἱς κατὰ συνδυασμὸν, εἰς τὸ συναψαῖ φιλοτήλια πρὸς τὰς πλεστοχώρας πόλεις ἀναγκάσαν. p. 100.

*Plebeians.*



*Plebeians*. The thing may be true, but it is not † probable, and it is not said by *Livy*. 'Tis the report of *Dionysius* alone. *Livy's* words are *Centum in PATRES legit qui deinde MINORUM GENTIUM appellati*.

BOTH Dr. \* *Middleton* and Dr. † *Chapman* seem to have taken for granted, that when *LIVY* says, the new Senators were afterwards called *Patres minorum Gentium*, he meant to intimate, that they were Persons of *Plebeian Families*. Dr. *Chapman* writes, that "the Persons pitched upon [by *Tarquin*] were eminent for their "civil or military knowledge, and inferior in nothing but Birth, "to those who already composed that *August Assembly*." But why are we to believe, they were *Plebeians*, or inferior in Birth to the old Members of the Senate? If this learned Gentleman does really think, that, in the Appellation, *Patres MINORUM GENTIUM*, is implied, that they were *Plebeians*, by birth; I would ask, how we are to understand the following Words of

\* p. 28.

† p. 37.

† It is not probable that they were all *Plebeians*, if *Rome* had then any *Patricians* fit for the Senate; because, by the Accounts of both the Historians, *Tarquin* was equally obliged to all the Citizens for his Elevation to the Throne.

Nevertheless, if the Distinction of *Patres Majorum* & *Patres Minorum Gentium* was posterior to that of *Dii Majorum* & *Dii Minorum Gentium*, and alluded to it, one might thence form a kind of Argument to prove, that *Tarquin's* new Senators were *Plebeians by Birth*: For the *Dii Minorum Gentium*, though the Children of the other *Dii*, were bastards, and therefore *Plebeians*; not Gods by birth, but made Gods by their Parents. But I should conjecture, that the Appellation of *Minorum Gentium*, denoted juniority, and, in that respect only, inferiority: For though the *Dii Majorum Gentium*, were more powerful, and well as of greater Antiquity than the *Dii Minorum Gentium*, this does not appear to have been the Case with the Senators of *Romulus* and those of *Tarquin*. Should we suppose the new Senators to have been, by Birth, *Patricians*, they might yet, when admitted into the Senate, be regarded as a Corps, somewhat less honourable and respectable, on account of its later Creation, than the Old Corps of Senators, which was considered as having existed from the very Birth of the State. A newly raised Regiment of an Army consists, probably, of Men as well born, as those of a very old Regiment, yet this old Regiment will always be considered, on account of its Age, as more honourable than the other. N. B. In considering this matter, it ought to be remembered, that, according to *LIVY*, the new Company of Senators, was equal in number to the whole of the Old. For he does not admit of any new Creation of Senators on the Union of the two Kings, *Romulus* and *Tatius*. *Dionysius*, speaking of the 100 *Sabine* Senators which, according to him, were added to the 100 *Roman*, says they had the Appellation given them of THE NEW [Senators] οὗς νεώτερος ἐκαλεῖται. p. 120. *Patres Minorum Gentium* might possibly mean no more, than The SENATORS of the younger Creation.

Ep. Fam. ix,  
21.

of *Cicero*, in his Letter to PAPIRIUS PÆTUS?—Mi Pate, qui tibi venit in mentem, negare *Papirium* quemdam unquam, nisi *Plebeium*, fuisse? Fuerunt enim PATRICII MINORUM GENTIUM. 'Tis probable from hence, that this Appellation was given to the Descendants of the PATRES MINORUM GENTIUM, i. e. of the 100 Senators made by *Tarquin*; as the Appellation of PATRICII MAJORUM GENTIUM was given to the Descendants of the 100 Senators of *Romulus*. It does not appear, that *Tarquin's* 100 Senators were more Ignoble by birth, than those of *Romulus*. Both the one and the other became noble and egregious by being made *Senators*, or PATRES; and the Descendants of both were called *Patricians*, not because descended from *Patricians*, but because descended from PATRES or Senators.

See Remarks,  
p. viii, xii,  
xiv, xix.

If the learned Writer believes that *Tarquin's* Senators were by Birth inferior to the old Senators, because *Dionysius*, by asserting that *Tarquin* chose into the Senate 100 Men from the *Plebeian* Families, seems to intimate such Inferiority, I answer, That the Authority of the *Greek* Historian, when alone, is, to my Apprehension, a very weak Foundation to build any thing upon, that relates to these early Times. But what degree of Credit this Historian deserves, is a point to be hereafter discussed. At present I shall only observe, that if Sir *Isaac Newton's* Reasons, for reducing the whole Duration of the Regal State to about 105 Years, be of any force, it is probable that some of the first Senators of *Romulus* were still living, when *Tarquin* made his Addition to the Assembly; and those first Senators are not supposed by *Livy* to have been better born or better bred, than the Persons associated to them by *Tarquin*. And, as to those who had been appointed to fill the Vacancies that had happened till the Time of *Tarquin*, the most of them must have been either Strangers, or such of the Citizens as were not *Patricians*. The Citizens of *Rome* could not be yet divided into the two Factions of *Patricians* and *Plebeians*. That ROMULUS, a Vestal's Bastard, a Foundling, seemingly by Trade a Cow-Stealer, had, in his Train, a marvellous Quantity of bigborn, illustrious, opulent, virtuous Nobles, whom, by calling them *Patres* or *Patricians*, or both, he distinguished from the rest of his worthy Followers, is a Notion not to be found in any antient Writer but the *Greek* Historian.\* Dr.

Vid. Sup. p.  
20.

\* Nothing can be more romantic, in appearance, than the Facts and Circumstances



Dr. Middleton has seemingly somewhat of this notion in his mind, when he says, "It is incredible that an INNOVATION of such impor-

tance  
circumstances of Facts, which the *Greek* Historian pretends to have collected, by great industry, and to have digested with great judgment, relating to the Origin of the *Roman* State. After sifting, and distinguishing and duly considering his Materials, and impartially weighing his Authorities, he finds [this is the Substance of his Account]

"That *Numitor*, soon after his re-establishment on the Throne of *Alba*,  
"turned his Thoughts to form a Kingdom for his Grandsons, and, with that  
"purpose, to build a new City on the Spot where they had been educated. And  
"finding the number of his People much increased, he made a present to the  
"Lads, (then about 17 Years old) of all those of his Subjects whose fidelity to  
"him he suspected; giving leave, at the same time, to as many of the other  
"*Albans* as pleased, to be of the Colony. Hereupon, not only a Multitude  
"of the lower Sort joined themselves to the two Brothers, but likewise a great  
"number of Persons of the first Distinction, and the noblest of the *Trojan* Race.  
"Fifty Families, descended from these latter, were still existing at *Rome*, in the  
"time of the Historian."

D. H. p. 72.

Ἡ δὲ ἐν ταῦτοις πολὺ μὲν, ὥσπερ εἶκος ἐν πόλει κινουμένη, τὸ δημοτικὸν γένος  
ἔχοντι δὲ καὶ τὸ ἀπὸ τῆς κρατικῆς γυναικός, ἐκ δὲ τῆς *Τρωικῆς* τοῦ ευγενέστατον δὴ νομιζο-  
μενον. ἔξ η καὶ γενεαὶ τιναὶ ἐπὶ περισσάν εἰς ἡμᾶς, πρὸς τὴν πόλιν καλίστα οἰκοί.

The Colony, we see, is already very respectable; but what a glorious Idea must we form of it, when it comes to be augmented and improved by whole Armies of worthy Sufferers for the Cause of Liberty, who are drawn to the new City by the *Asylum*, which *Romulus* opens for their Reception! For it was not a Sanctuary of Refuge for Runaway Slaves, insolvent Debtors, Robbers and Outlaws, but only for Men of Free Condition, and of generous free-born Spirits, who disdaining Submission to Tyrants and Oligarchs, (with which *Italy*, at that Time, much abounded) sought an honourable Retreat from the odious and oppressive Government of such despotic Lords.

Ἐπειτα μάθων πολλὰς τῶν κατὰ τὴν Ἰταλίαν πόλεων πόνητος ἐπιρροπτευομένης  
ὑπὸ τυραννίδων τε καὶ οὐλοῦντων, τῆς ἐκ πύτων ἐκπύουσας τῶν πόλεων, συχρὺς  
ὄντας, εἰ μόνον εἰσὶν ἐλευθεροί, διακρίνων ἢ συμφορὰς ἢ τυχὰς αὐτῶν, ὑποδεχόμεθα  
καὶ μεταρρεῖν ὡς ἑαυτοῦ ἐπεχειρεῖ, τὴν τε *Ρωμαίων* δύναμιν αὐξήσας βελήθειας, καὶ τὴν  
τῶν περὶ οὐκὸν ἐλαττώσας.

D. H. p. 83.

PLUTARCH, however, can by no means give Credit to this Story so judiciously framed by his Brother *Greek*; and seems to have it before him, while he is writing a quite contrary account of the Colony.

I shall here borrow M. *Dacier's* Translation.

"La mort d'*Amulius* aiant tout calmé, *Remus* & *Romulus* ne voulurent,  
"ni demeurer dans *Albe* sans y avoir la Souveraine Autorité, ni accepter cette  
"Autorité pendant la vie de leur ayeul. Ils le retablirent donc sur le Throne,  
"et après avoir rendu leurs devoirs à leur mere, et lui avoir fait toutes sortes  
"d'honneurs, ils resolurent d'habiter à part, et de batisir une ville dans le même  
"lieu."

*Observations on M. VERTOT's Answer*

"tance [the Introduction of 100 *Plebeians* into the Senate] which  
 "must needs disgust the NOBLES, should be attempted and  
 "established by an elective King, if he had not been supported  
 "by the Power and *Suffrages* of the COMMONS." And is it not  
 as incredible, that King *Tarquin*, who had just been so greatly  
 honoured by the Nobles, should do a thing so disgusting to them,  
 or that they, being so disgusted, should not express their dislike;  
 or, if they did express their dislike, that no Historian should  
 mention

"lieu, où ils avoient été nourris; et c'est le prétexte le plus specieux, et le plus  
 "honnête dont ils pouvoient colorer leur sortie d'Albe. Mais il peut bien être  
 "aussi, que ce fut plus par nécessité que par choix, parceque leurs troupes n'étant  
 "presque composées que d'esclaves fugitifs, et de bannis, il falloit, ou qu'ils se  
 "résolussent à voir leur puissance entièrement détruite, s'ils congédioient ces  
 "troupes, ou qu'ils habitassent dans quelque lieu séparé pour les retenir. Car  
 "que les habitants d'Albe n'aient pas voulu se mêler avec un tas de bannis et d'esclaves,  
 "ni les recevoir comme Citoyens, cela paroît assez par l'enlèvement des Sabines, que  
 "ces hommes ramassés ravirent, non pour assouvir une passion criminelle, mais malgré  
 "eux et à la dernière extrémité, ne trouvant personne qui voulût leur donner des filles  
 "en mariage. Aussi portèrent-ils toute sorte d'honneur et de respect à celles qu'ils  
 "avoient enlevées, et les traitèrent comme leurs femmes.

"Après cela dès que leur ville eut commencé à prendre sa première forme, ils  
 "ouvrirent un REFUGE à tous venants, et l'appellerent le Temple du Dieu Asyle.  
 "Tout le monde y étoit bien reçu, on ne rendoit, ni l'esclave à son maître, ni le  
 "débiteur à son créancier, ni le meurtrier à son juge, et l'on soutenoit qu'Apollon  
 "lui même avoit autorisé ce lieu de franchise par un Oracle formel."

M. Dacier, on the words, *on ne rendit ni l'esclave à son maître*, makes the  
 following Note.

"Denys d'Halicarnasse écrit pourtant, qu'on ne recevoit à cet Asyle que les hommes  
 "libres; mais je doute de cette particularité. Un homme qui veut s'agrandir à  
 "toute force aux dépens de ses voisins, n'y regarde pas de si près."

Translators are generally partial to their Authors: Yet the *French* Translator  
 of *Dionysius* prefers *Plutarch's* account of the *Motives* which induced *Romulus*  
 and *Remus* to leave *Alba*; and likewise his account of the sort of Gentry that  
 took refuge in the Sanctuary at *Rome*. "Denys d'Halicarnasse colore ici d'un  
 "honnête prétexte la sortie de *Remus* & de *Romulus*, et par là il fait adroite-  
 "ment sa Cour aux Romains, et à l'Empereur sous les yeux duquel il écrivoit.  
 "Plutarque, (Vie de *Rom.* p. 22. D.) peut-être moins flatteur dit, &c." See  
 L. 1. c. xx. Note, a.

And again, "Tite Live (l. 1. c. 8.) & Plutarque, (vie de *Rom.* p. 22. E.)  
 "disent au contraire, que tout le monde y étoit bien venu; esclave, libre, meur-  
 "trier, endetté, &c. Je les en croirois plus volontiers que Denys d'Halicarnasse,  
 "qui étoit peut être payé par l'Empereur pour écrire en faveur des Romains,  
 "afin de rendre le joug de leur domination plus supportable aux Grecs; cela  
 "paroît assez par sa Préface." See L. 2. c. 6. Note a.



mention a word of it, not even the *diligent*, and *accurate* and *faithful* and *exact* *Dionysius*?

Doubtless what Tarquin did was no INNOVATION: *Livy* never mentions the *Patricians* as a body of men out of which the Senators, by a *Constitutional Right*, were to be always chosen. There were no *Patricians* (as I before observed) for many years, who by their age could be qualified for the Senate.

Out of the best of the Citizens, and out of such men as came from the neighbouring States, to settle at *Rome*, were, doubtless, chosen the fittest to supply the vacancies of the Senate, during the Regal State.

And this unquestionably was what Tarquin did. Neither was his creating an hundred Senators AT ONCE a Novelty or an Innovation, if it had been done in the joint Reign of *Romulus* and *Tatius*, as *Dionysius* reports; for between these two Creations, there were not, probably, forty years.

2. M. VERTOT speaks of Tarquin the Elder, as more especially obliged to the favour of the PLEBEIANS, for his Elevation to the Throne, and as chusing his 100 new Senators out of that body, in order to preserve their Affections.

Second Mistake.

Not a word is there of this, either in the *Latine* or the *Greek* Historian. *Dionysius* tells us, that Tarquin had gained the affection of many of the *Patricians*, and that he was chosen King with the unanimous consent of all the Citizens; and *Livy's* words are ingenti Consensu Populus Romanus [not plebes] regnare jussit.

Dr. Middleton observes, from *LIVY*, "that Tarquin's view in enlarging the number of the Senate, was to strengthen his particular interest, and to RAISE a sure Faction to himself in the new Senators of his own Creation."

3. WHEN M. Vertot, having previously asserted, that No man could be a SENATOR, without being first a PATRICIAN, † is to account for the admission of Tarquin's 100 Plebeians into the Senate, he tells us, that the King first declared them *Patricians*, and then made them Senators: And for this he cites *LIVY*, *Patricios fecit* (dit Tite Live) *et in Senatum numerum cooptavit*. I cannot find these words in the *Latine* Historian: And I am much

Third Mistake.

Rep. p. 459.

E 2

deceived,

† Il falloit à la verité etre Patricien pour etre Senateur. Rep. p. 457.

deceived, if in *Livy* there be any Intimation of PATRICIANS being MADE, either by *Kings*, or *Consuls*, or *Censors*, or the *People*. It is, I verily believe, a *Creation out of nothing* by *Dionysius* alone, whose Authority, even in matters relating to the *Roman* Constitution, has, by some strange fortune, happened to be of greater weight, with many learned Men, than that of *Livy* and all the *Latin* Writers. *Livy* seems not to have ever heard of any *Patricians* but the Descendants of the 100 Senators of *Romulus*, and the Descendants of those persons, who were afterwards admitted into the Senate by the *KINGS* and the *FIRST CONSULS*.\*

And this is the Idea, which Dr. *Middleton* had of *Patricians*, Vol. I. p. 141. when he wrote his *Life of Cicero*. "The Title of *Patrician* belonged only, in a proper Sense, to those Families of which the Senate was composed, [i. e. to the Families of those persons of whom the Senate was composed, &c.] in the earliest Times either of the *Kings* or the *FIRST CONSULS*, before the *COMMONS* had obtained a promiscuous admission, to the public honors, and by that means into the Senate. All other Families, how considerable soever, were constantly styled *Plebeians*, Vid. *Ascon. Argum. in tog. Cand.*"

I have not observed, that Dr. *Middleton*, though *Dionysius* be commonly his Guide, has, in any part of his Treatise, adopted that Historian's notion of *Patrician-making*. The Doctor says nothing of it, in speaking of the first Creation of the Senate, p. 20. and 23.

Nor in speaking of the 100 *Sabine* Senators, created after the Union of *Romulus* and *Tatius*, p. 22.

Nor in speaking of *Tarquin's* 100 new Senators, who, according to *Dionysius*, were *Plebeians* by birth, p. 28.

Nor in speaking of the Citizens, who (according to the same Historian) were taken from among the *Plebeians*, by the *First Consuls*; to supply the vacancies of the Senate, p. 38.

Nor

\* Centum creant Senatores [*Romulus*] — PATRES certe ab honore, PATRICI- que progenies eorum appellati. Lib. 1. c. 8.

— Nobilitatem istam vestram quam plerique, oriundi ex *Albanis* et *Sabinis*, non genere nec sanguine, sed per cooptationem in PATRES, habetis, aut ab regibus lecti, aut post Reges exactos jussu Populi. Lib. 4. c. 4.

N. B. These words are spoken by a *TRIBUNUS* to the *PATRICIANS*, in the Year of *Rome*, 308. Fast. Cap.



Nor in speaking of the admission of *Appius Claudius*, the Y. of R. 249-  
*Sabine*, into the Senate, p. 39.

In p. 27, 28. of his Treatise, the Doctor observes, that *Manutius*, "to make the accounts of *Livy* and *Dionysius*," concerning the ALBANS, who were received into the Senate, in the time of *Tullus Hostilius*, "consist with what is delivered concerning the limited number of the Senate, *imagines*, that these ALBANS were not created *Senators* but *Patricians* only, and by that means rendered capable of being chosen into the Senate, on the occasion of a vacancy." And the Doctor adds, "But it may be supposed perhaps with more † probability, that the number of *Albans* taken into the Senate at that time, was no more, than what supplied the vacancies then subsisting, so as to fill it up to its settled complement of 200."

But though, as to the business of *Patrician-making*, Doctor *Middleton* be thus reserved, Dr. *Chapman* is very distinct and full upon the Subject, in his *Second Chapter*; which treats *Of the Qualifications requisite for a Roman Senator*.

"As all Offices of Power or Trust, were, by the Constitution Essay, p. 91.  
of the Roman Government, confined to the PATRICIANS; 2, 3, 4.  
they alone were capable of Seats in the Senate. The Plebeians, or Commons, were excluded in the fullest and most express words; the meanness of their birth, as well as Education, being thought to incapacitate them for so important a Station; but then, they had a great share, in conferring that Dignity upon others, which they were declared incapable of possessing themselves. Hence, *Romulus*, at the first Institution of the Senate, recommended the most eminent Patricians to the People's Choice; hence, the hundred new Members, that were created upon the Union with the *Sabines*, are expressly  
said

† That what the Doctor would here suppose, [and Dr. *Chapman* likewise, in p. 38. of his Essay] is, in no degree, *probable*, I shall take occasion to shew, hereafter. But I cite the Passage as the only one where the Doctor mentions the *Creation of Patricians*; and the instance of it, in the time of King *Tullus Hostilius*, he seems to think, was only in the *Imagination of Manutius*. Indeed *Dionysius* says nothing of the King's raising these *Albans* into Patricians, previously to their being made Senators; and they were probably much more honourable Persons than any of his Senators: For these were, at best, but the Refuse of *Alba*, whereas the *Albans* whom *Tullus* admitted into the Senate, were the Heads of the principal Families of that State.

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“ said to have been of that Order; and hence, those, for whom  
 “ the elder *Tarquin* procured that Honour, eminent as they  
 “ were for their civil or military Accomplishments, were still  
 “ obliged to be made Patricians, as a necessary step to their being  
 “ created Senators.

“ All writers are agreed, that, during the regal Government  
 “ at least, the Plebeians continued excluded from Seats in the  
 “ Senate; but how long afterwards, this Partition betwixt the  
 “ two Orders was kept up, is not so easily ascertained. As the  
 “ places of those, who had fallen Victims to the cruelty of  
 “ *Tarquin*, were supplied by Persons of the Equestrian Order;  
 “ and as this is said to have given occasion to the Distinction of  
 “ *Qui patres quique conscripti* so generally used afterwards in  
 “ assembling the Senate; some Authors have inferred from thence,  
 “ that the new Members were not Patricians. But they are  
 “ much mistaken who suppose that they were not of the Patri-  
 “ cian, because they are said to have been of the Equestrian  
 “ Order; for all the young Men of the first, were of Course  
 “ of the second, unless their fortunes happened to be very in-  
 “ considerable: And I presume, that the Title of Conscript,  
 “ which is imagined to have been given them then, will scarce  
 “ be thought so full a proof of their being Plebeians, as to over-rule  
 “ the express Testimony of *Dionysius*, who says they were not.  
 “ Besides, *Livy* does not express himself positively, as to this  
 “ Distinction [*Qui Patres quique Conscripti*] being first intro-  
 “ duced at that time; and some writers of great Judgment and  
 “ Penetration, have not scrupled to give it a much older date.  
 “ I am of opinion, therefore, that, as it does not necessarily fol-  
 “ low from the words of *Livy*, that they were not Patricians;  
 “ we may well assent to *Dionysius*, who positively affirms, they  
 “ were so created, previous to their being admitted into the  
 “ Senate.”

In this Passage of the learned Writer's *Essay*, there are several particulars, which seem to demand Consideration.

I. He speaks of THE CONSTITUTION OF THE ROMAN GOVERNMENT, as existing before the Creation of the Senate.  
 “ Hence, says he, (that is, *Because the Patricians alone, by the Constitution of the Roman Government, were capable of Seats in*  
 the



the Senate) "ROMULUS, at the first Institution of the Senate, recommended the most eminent Patricians, to the People's choice."

And so, in p. 22, 23.—"I think it is evident, that the Election of the Senate, as related above by Dionysius, was conducted with all the Formality, required by the fundamental Laws of the Roman Constitution."

If it should be asked, *Who made those fundamental Laws?* The words of the learned Writer, which immediately follow the last cited, afford an answer.—"The same Consent of the People which set the Crown upon the Head of Romulus, and was the source of all Power at Rome, raising also the most eminent Citizens to the Dignity of Senators, and, at the same time, agreeably to the Law, which confined all Offices of Power and Trust to the Patricians, conferring that honour [the Senatorian Dignity] on none but those who made a part of that illustrious Order."

The fundamental Laws then of the Roman Constitution (if I rightly understand the learned Author) were the ARTICLES of the Original Contract between King Romulus and his indigested Subjects; Articles agreed upon, before the actual Distribution of the Multitude into those Tribes and Curias, to which the Lands, in equal Portions, were afterwards assigned by Lot; and before the Citizens were distinguished into illustrious Noblesse and Plebeians; and before the Institutions of the Patronage and the SENATE. All these Acts and Institutions, with the settling and ascertaining the Rights and Powers of the Three Estates (King, Senate and People) were only the Execution of the Fundamental Laws of the Roman Constitution, i. e. the Execution of the Articles of the Original Contract.

If this was the Case; then, with regard to the point in Question, we are to say, that THE PEOPLE, by their original Contract with King Romulus, covenanted, that the Majority (the main Body) of themselves should be called Plebeians, and, because meanly born and bred, be for ever incapable of any office of Power and Trust, and of sitting in the Senate (when that Assembly, according to Contract, should be created;) and likewise that their Children, and even latest Descendants, let their Merit prove never so shining, should,

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should, on account of their *birth*, be excluded from the Senate and from all Offices of Power and Trust.

I cannot think, there is any appearance of Probability, that this was an *Article of the Original Contract*, a LAW made by that Consent of \* the People, which was the source of all power at Rome.

But if we can suppose that the Bulk of the People were so modest and humble, as, for the *reasons* mentioned, to judge that they and their Posterity ought to be for ever excluded the Senate, one would think, that the same *reasons* should naturally have induced them to declare themselves and their Posterity incapable of being made *Patricians*, because, by that Promotion, the way into the Senate would be left open to them, though unqualified for the important Station, and though the acquired Title of *Patrician* could not possibly render their *birth* more noble, or their *Education* more liberal.

2. "ALL writers are agreed (says the learned Author) that \* during the regal Government, at least, the Plebeians continued excluded from Seats in the Senate; but how long afterwards this Partition betwixt the two Orders was kept up, is not so easily ascertained."

I could wish, that some few of those Writers had been named, who are here said so unanimously to agree in the *Exclusion* of the Plebeians from the Senate, and speak of the *Partition* between the two Orders being kept up, during the regal State. *Livy* says nothing of this *Partition*, nor, I believe, any one ancient *Latine* Writer. If *Livy's* account of the Origin of the *Patricians* be received, there could be no such *Partition* during the Reign of *Romulus*, (as I have before observed.) For all the Persons, chosen to fill the vacant Places of the Senate, must, in his time, have been taken from the Plebeians. Nor is there sufficient proof, that by any *fundamental Law of the Constitution* the Plebeians were at any time, during the regal State, excluded from the Senate.

*Dionysius*, who says, or seems to say, something like it, is, nevertheless, the very writer who crowds the Senate-house with Plebeians.

\* Dr. Middleton, in p. 31, 32, 51, 52. of his *Treatise*, and Dr. Chapman, in p. 33, 47. of his *Essay*, seem to think it unlikely that the People would part with Powers, properly vested in them.



beians. According to him, the *Elder Tarquin's* 100 new Senators were all, by birth, of that Order: and so were all the Persons who obtained admission into the Senate immediately after the banishment of the younger *Tarquin*. The number of the latter, if we may credit *Plutarch* (whom *Dr. Chapman* \* has followed) was 164. What likelihood, if these Facts be true, that there was any *fundamental Law of the Constitution* which barred the Door of the Senate against the Plebeians? \* P. 68.

3. But, says the learned Writer, these 100 and 164 Persons, Plebeians by birth, were *created Patricians, previously to their being created Senators*; and there was therefore no violation of that *fundamental Law, which confined the Senatorian Dignity to the Patrician Order*. And he seems to think, that this method of satisfying the Law was common and regular. *Dr. Middleton* however (as I before observed) considers the Introduction of *Tarquin's* 100 Plebeians into the Senate as "an *Innovation*;" and from this he forms an argument to prove, that the Prerogative of creating Senators belonged to the *People*, and not to the *King*; "it is incredible, (says he) that an *Innovation of such Importance* which must needs disgust the *Nobles*, should be attempted and established by an elective King, if he had not been supported by the Power and SUFFRAGES of the *Commons*." Treat. p. 29.

It is plain, that the learned Author of the Essay, in all that he says on the Subject of *Patrician-making*, supposes that *Division*, which *Romulus*, is said to have made, of his *People into Patricians and Plebeians*, two Orders of Men, of which the first had Privileges that the other had not. Now this Fact has no Authority to support it but that of *Dionysius*, which, as to the first Settlement of the *Roman State*, will perhaps appear, before we have done, to deserve very little regard. But, supposing the Fact to be true, *What were the Privileges of a PATRICIAN*? Had he a right either to Magistracies, or to a Seat in the Senate? No; but he had a *Capacity of being chosen* into the Senate, and into Offices of Power and Trust; which Capacity the Plebeians had not. Well then, a Design is formed to bring 100 Persons, from the Plebeian body into the Senate. How is this to be done without violating that *fundamental Law* which forbids the Admission of Plebeians into that Assembly? With all the ease ima-

ginable. These 100 Plebeians, before they are admitted into the Senate, are to be declared *Patricians*, that is to say, they are to be declared *capable of being admitted into the Senate* and into Offices; for (in the Hypothesis of the learned Writer) this is all, that, in the present Question, can be meant by the Word *Patrician*.

But if this was the case, and if the King had power to *make Patricians*, (which the learned Writer seems not forward to deny) what will be the amount of *that fundamental Law of the Constitution*, which declared *Plebeians incapable of sitting in the Senate*? It will be no more than this, that Plebeians should not be *capable* of that honour, till the King had *declared them capable* of it: And whether this Notion will not greatly favour the Royal Prerogative, with regard to the main point in question, *the right of Creating Senators*, I shall leave to the Reader's Consideration.

See p. 41.  
§ Vid. Supr.  
P. 29, 30.

4. The learned Writer has shewed a willingness, in the Passage § above-cited, to reconcile the Testimony of *Livy* with that of *Dionysius*, concerning *the Senators created immediately after the Regifuge*.

*Dionysius* reports, that these new Senators were, by birth, *Plebeians*, but were made *Patricians* previously to their being admitted into the Senate.

*Livy* reports, that the new Senators were Persons taken from the *Equestrian Order*.†

Now it will be difficult to make these two Reports agree, unless we will suppose,

Either, that *all the Knights were Plebeians*, which Dr. *Chapman*, with great reason, expressly denies:

Or that, the *Equestrian Order*, consisting partly of *Patricians*, partly of *Plebeians*, the Consuls (or the People) to fill the Vacancies of the Senate picked out, from the Order, *Plebeians only*, in Number 164; which is in no degree probable.

To return once more to M. *Vertot*:

4. THE

† Dr. *Middleton*, by mistake, quotes *Livy* as saying, *that a number of the best Citizens were chosen from the COMMONS* to supply the Vacancies. *Middl. Treat.* p. 38.



4. THE ingenious Abbé has, I think, made a *fourth* mistake where he cites *Dionysius*, as saying, "That the Plebeians, taking advantage of the Banishment of *Coriolanus*, introduced themselves into the Senate, and shared, with the Patricians, the Dignities, which had before been appropriated to the *First Order* of the Republic." M. *Vertot* does not give the Words of *Dionysius*, nor refer us to any particular Page or Book; but probably he had, in his Memory, a Passage, of which the Author of the DISSERTATION has (to prove the same thing) transcribed a part, with an &c.

"I have said, that the time when the People [the Plebeians] obtained the Privilege of being chosen immediately into the Senate, must have been between the years 263, and 314; because it is plain from *Dionysius of Halicarnassus*, that it was after the Affair of *Coriolanus*, which happened in the first of those Years; for he says that, from that time, the Democracy gained ground upon the Aristocracy, by the Peoples being made eligible into the Senate, and by several other concessions made in their favour, of which he here gives a particular account: καὶ ἐνθενδε ἀρχαμένῳ ὁ δῆμος ἤρθη μέγας. ἡ δὲ ἀριστοκρατία πολλὰ τε ἀρχαίαι ἀξιώματος ἀπέβαλε, βέλῃς τε μετεχειν ἐπίρρευσά τοις δημοτικοῖς, &c. † D. Hal. 7. B.

Not a word is there in the whole Passage (as the Reader may see below) to the purpose, for which it is cited. *Dionysius* does not say, that from this time the Plebeians were made eligible into the Senate, nor does he speak of any new Privilege acquired by them, at this time, but that of summoning Patricians to the Bar

F 2. of

† So much only of the Passage is transcribed in the Dissertation; the whole runs thus:

Αὕτη πρώτη καὶ ἀνδρῶν πατρικίων προκλήσις εἰς τὸν δῆμον ἐγένετο ἐπὶ δίκῃ. ἀπ' ἐκείνου τε χρόνου τοῖς ὑπερον λαμβάνουσι τὴν τε δῆμον προσασίαν, εἶδος καλίστην, καλεῖν ἔς δεξιὰς τῶν πολιτῶν δίκην ὑφεξούτας ὑπο τῷ δῆμῳ. Καὶ ἐνθενδε ἀρχαμένῳ ὁ δῆμος ἤρθη μέγας: ἡ δὲ ἀριστοκρατία πολλὰ τε ἀρχαίαι ἀξιώματ' ἀπέβαλε, βέλῃς τε μετεχειν ἐπίρρευσά τοις δημοτικοῖς, καὶ ἀρχαίαι μέλειναι συγχωρήσας, ἱερῶν τε προσασίας λαμβάνειν ἠκούσας, καὶ ὅσα ἀλλὰ τιμωτάτα ἦν καὶ ἰδία τῶν πατρικίων μοσῶν ἀπάσι κοινωσάμενη, τὰ μὲν ὑπ' ἀνάγκης καὶ ἀκούσας, τὰ δὲ ἐκ προνοίας τε καὶ σοφίας, ὑπὲρ ὧν κατὰ τὸν οἰκεῖον καιρὸν ἐρω. D. H. p. 469. Ed. Frankf.

of the Peoples Tribunal. The People (he tells us) by this first step towards a Democracy, *began* to grow powerful. The other advances which he mentions, as made by the People, were, the most of them, not made till above 100 Years after, and one may as justly infer from the Historian's words, that the Plebeians obtained admission into the higher Magistracies, and into the Priesthood *at this time*, as that they got admission into the Senate.

Treat. p. 44.

Dr. Middleton, however, says, "it is evident from the Authority of *Dionysius* that the *Tribunes*, by the mere weight and great Power of their Office, *had gained an actual Admission into the Senate within two Years* \* *after their first Creation*, [*i. e.* in 262,] in which [Senate] we find them [in the Year 308] debating and enforcing with great warmth the Demands of the Commons for a Liberty of Intermarriages with the Nobles."

98.

And Dr. Chapman in p. 97. of his Essay, writes thus. "In Process of Time [*i. e.* after the Commencement of the Commonwealth] "the *Plebeians* did indeed [without being previously made Patricians] "obtain admission into the Senate; but "the Reason of their succeeding in this important Point, is not "mentioned. All that is known with certainty is, that *the TRIBUNES OF THE PEOPLE obtained that Honour, within less than two Years after their first Creation*, though not without "great Opposition on the Part of those who were strenuous Assertors of the Privileges of the Patricians: For we find *Appius Claudius*, who was the most implacable Enemy the Plebeians ever had, lamenting, in the memorable Speech he made in the Affair of *CORIOLANUS*, that the Senate should have been so weak as to receive amongst them those pestilent Demagogues "in spite of all the Remonstrances he made to dissuade them "from taking a Step so fatal to their future Quiet." [*καὶ ταῦτα*

D. H. p. 454.  
Y. of R. 262.

*ἐπεισαν ἡμᾶς οἱ σύμβουλοι το ἀρχεῖον εἶσαι παρελθεῖν εἰς τὴν βουλὴν, ἐπὶ τῷ καὶνῷ παραγινόμενον κακῷ, καὶ μαλιστα ἐπὶ τῷ βουλῆς φόβῳ, πολλὰ, εἴπερ ἀρὰ μεμνησθε, κεκραγὸς ἐμὲ, καὶ μαρτυρούμενός θεός τε καὶ ἄνθρωπος, ὅτι πόλεμον ἐμφυλίον ἀπαύσον εἰς τὴν πόλιν εἰσαῖτε καὶ πάντα ὅσα ὑμῖν προέβηκε, λεγοντός. Dion. L. 7. c. 49.]*

" Yet

\* The affair of *Coriolanus* was in Agitation in 262, which was two Years after the Institution of the Tribuneship.



" Yet many Years after the Tribunes had been thus admitted  
" into the House, they were not suffered to deliver their Op-  
" nions, in Quality of Members." (See Dion. L. 10. c. 31.)

[Τον μὲν γὰρ ἐμπροσθεν χρόνον ἐκκλησίας μόνον ἦσαν οἱ δημαρχοὶ κυ- D. H. p. 657.  
ριοι, βέλῃν δὲ συναγαγεῖν ἢ γνώμην ἀγορεύειν οὐκ εἶχον αὐτοῖς, ἀλλ' ἡν Y. of R. 297.  
των ὑπατῶν τετο το γέρας] " though at the same Time they were  
" authorized, by virtue of their Office, to obstruct the passing  
" of any Decree, by interposing their single Veto, or Inter-  
" cession."

I take leave to observe here, that the learned Writer, in giving  
the Sense of the last cited Passage out of *Dionysius*, has added the  
words in *Quality of Members*: and this, as I conjecture, because  
he thought, it appeared, by the former Passage, that the *Tribunes*,  
in virtue of their Office, were Members of the *Senate*, in the  
time of *Coriolanus*. Nevertheless, the Words το ἀρχεῖον εἶσαι  
παρελθεῖν εἰς τὴν βέλῃν, † do not necessarily import, that the  
*Tribunes* were admitted into the Senate, as Members. It would  
seem, from the very nature and design of their Office, that they  
should always have the liberty of being present at the Debates of  
the Senate: For how otherwise should they obstruct the passing  
of any Decree by their *Veto*?

Dr. Chapman proceeds;

" From this Time, the Members of the Senate seem to have  
" been chose indiscriminately out of the two Orders; the Office  
" of Tribune was not even insisted on as a previous Qualification;  
" and we meet with \* Plebeians, who were grown grey in the Se-  
" nate, before they had served the Public in any other Capacity."

He

† Εἰς τὴν πόλιν, in remp. cum *Lapo* malit *Portus*. See *Hudson's D. H. Lib.*  
vii. c. 49. and this seems to be the true reading. But if we read βέλῃν, the  
Words of *Appian* may possibly relate only to that Day, when the price to be set  
on the Corn was debated in the Senate, and *Coriolanus* gave offence by his haughty  
Speech; to which Debate *Dionysius* tells us, the *Tribunes* were invited by the  
Consuls. Ταῦτα δὲ ὁρῶντες οἱ δημαρχοὶ παρέσαν γὰρ τῷ συνεδρίῳ παρακληθέντες  
ὑπὸ τῶν ὑπατῶν. Lib. vii. c. 25.

\* Non tamen ultra processum est, quam ut unus ex plebe, usurpandi juris cau-  
sa, P. *Licinius Calvus*, Tribunus militum consulari potestate crearetur:—Vir  
nullis ante honoribus usus, vetus tamen Senator, & ætate jam gravis. *Liv.* L. 5.  
c. 12.

He mentions the Instance of *P. Licinius Calvus*, who, as *Livy* observes, had passed through none of the publick Offices, yet was an old Senator. [in the Year of *Rome*, 353.]

Treat. p. 49.

Dr. *Middleton*, to prove this point, mentions, beside *Licinius*, another Plebeian Senator. “*Sp. Maelius*, who [in the Year of “*Rome* 313] was attempting to make himself King, was one “of the most wealthy and popular Commoners of the Equestrian Order, yet from *Livy*’s account, it is plain, that he was “a Senator: for his first Ambition, it is said, was only to be “chosen Consul, which seems to imply † it: but the Dictator’s “Speech concerning him directly asserts it: for he observes with “Indignation, that he who had not been so much as a *Tribune*, “and whom, on the account of his birth, the City could hardly “digest as a Senator, should hope to be endured as a King.”\*

That Plebeians were admitted into the Senate so early as the Year of *Rome* 313, that is, about seventy years after the Commencement of the Republic, will be easily granted: But what Proof is there that they were ever incapable, by Law, of being chosen into the Senate? The thing is improbable, and the Authority of *Dionysius* is frequently disregarded, even by Dr. *Chapman*, when it stands alone, and when the Fact related wants the appearance of Probability.

This learned Writer, in the Margin of p. 96. of his Essay, has a Passage from *Livy*, L. 2. c. 32. Sic placuit igitur, Oratorem ad plebem mitti [it was at the time of the Secession] *Mene-nium Agrippam*, facundum virum, et quod inde oriundus erat, Plebi charum.

The Doctor adds,

“’Tis certain from hence, that *Agrippa* was originally a Ple-beian,

† It appears from hence, that Dr. *Middleton* did not suppose that any Man could be chosen Consul, who was not already a Senator. The Author of the Dissertation seems to think otherwise.

\* Ex equestri ordine, ut illis temporibus, prædices—cui Tribunatus plebis magis optandus quam sperandus—ut quem Senatorem concoquere civitas vix posset, regem ferret. *Liv.* L. 4. 13, 15.



" beian, and as he was *Consul* ten Years before he was sent upon  
 " this Embassy, 'tis *no less certain*, that he must have been raised  
 " to the Rank of *Patrician*; none but *Patricians* being then, nor  
 " for many Years afterwards, capable of that Office. But as  
 " there is all the Reason in the World to believe, that, during the  
 " twenty-five Years *Tarquin* sat upon the Throne, there was no  
 " *LECTION* of the Senate, and as *Agrippa* was *Consul*, only six  
 " Years after that famous one, which was made upon the Sub-  
 " version of the Regal Government; it is pretty evident, he must  
 " have been chose into the Senate, and made a *Patrician* at that  
 " time; and therefore we conclude, that the same Honour was  
 " conferred upon the others, that were chose with him, and  
 " consequently that *Plebeians* were not then rendered capable of  
 " Seats in the Senate."

I observe, that the Dr. has here, in one Article, forsaken the  
 infallible Guide, the faithful and exact *DIONYSIUS*, to follow Essay, p. 35.  
 the hasty and negligent *LIVY*. *Dionysius* asserts confidently, Treat. p. 21.  
 " That *Tarquin* filled up, with his Adherents, the Vacancies,  
 " which by Murders and perpetual Banishments, he made in the  
 " Senate." †

Nevertheless the Dr. thinks, " There is all the reason in the Essay, p. 96.  
 " World to believe, that during the twenty-five Years *Tarquin* Note, b.  
 " sat upon the Throne, there was no *LECTION* of the Senate."

This (as I before observed) is intimated by *LIVY*.—*Statuit Lib. 1. c. 49.*  
*mullos in patres legere, quo contemptior, paucitate ipsâ, Ordo esset,*  
*&c.* And perhaps the same may be fairly gathered from the nu-  
 merous *LECTION* of Members, which was made immediately after  
 the Regifuge. Indeed neither *Livy* nor *Dionysius* mention the  
 exact number: But *Plutarch* (whom Dr. *Chapman* follows in this  
 Point) says, they were 164; and the two other Historians speak  
 as if the number was very considerable. I am inclined to think,  
 (for Reasons which will be mentioned in another place) that it  
 exceeded the Reckoning of *Plutarch*: But, if *Tarquin* destroyed  
 the old Senate, and made another [*ετεραν βουλην*] composed of his  
 own Creatures, there would not probably be half a score vacant  
 Places

† Επει δε διεφθειρε το κρατισον της βελης μερος θανατοις τε η̃ αειφυγταις,  
 ΕΤΕΡΑΝ ΒΟΥΛΗΝ αυτος κατεστησατο, παραγαγων εις τας των εκλιπουτων τα-  
 ρας της ιδιης εταιρους. D. H. p. 245.

*Observations on M. VERTOT's Answer*

Places in the Assembly, when the *Lection* was made upon his Expulsion.

To prove, that the *Plebeians* [in general] were not rendered capable of Seats in the Senate, at the time of that famous *Lection*, the learned Writer reasons thus: "I think, *so popular an Act*,  
 " *could not but have been enumerated, amongst the other Instances*  
 " *of Favour and Indulgence*, bestowed upon them, in order to  
 " engage them to support the Consular Government with greater  
 " zeal: And yet *nothing of this kind is to be found in any History*  
 " *of those Times*, though it is certainly *much more solid and sub-*  
 " *stantial*, than several of those which are recorded with so par-  
 " ticular a care."

If the *Plebeians*, in general, were never, by Law, incapacitated for the Senate, we need not wonder, that we read of *no public Act* to render them capable of sitting in that Assembly. And, from the silence of the Historians, as to any such public Act, may we not form an Argument of some force, against the Opinion, held by the learned Writer, *That during the Regal State, and for many Years \* afterwards, all Plebeians were under a LEGAL Incapacity of being chosen into the Senate?*

But, should it be granted, that the *Plebeians*, whilst *Plebeians*, were by Law incapable of being *Senators*, yet one cannot see, how the taking off this Incapacity could be an instance of *Solid* and *Substantial* Favour and Indulgence: Seeing (as the learned Writer holds) they were always capable of being made *Patricians*, an honour which *instantly qualified* them for sitting in the *August Assembly*. In their way to it, they were to pass through the Form of being declared *Patricians*. And was the being excused from this Ceremony so very *Solid* and *Substantial* a benefit, as to exceed all the rest bestowed on the *Plebeians* at the Commencement of the Republic? Surely it does not seem to be an advantage, in any degree, real: Because it is not to be doubted but the same Magistrates or *Comitia*, which had the *will* to bring ten, or a hundred, or any number of Persons, *Plebeians* by birth, into the Senate, and had the *Power* to do it, on the sole Proviso of their  
 their

\* By *many Years afterwards* the learned Writer means about *eighteen Years*, *i. e.* from the first Year of the Republic, to the time of the Dispute concerning *Cerialanus*.



their being first declared Patricians; I say, it is not to be doubted, but the same Magistrates or *Comitia* would likewise have both the Power and the Will to bestow on them that qualifying Title of honour; as in the Case of the 164, who, *Dionysius* tells us, were all Plebeians by birth, but made Patricians, that they might be brought into the Senate.

The Doctor proceeds:

"It is very observable also, that during the unhappy Divisions Essay, p. 96.  
"which arose betwixt the two Orders, we find not the least Mention  
"of any one Plebeian Senator; whereas if there had been any  
"such, it is scarce possible to suppose, that we should not have  
"heard of them, as they could not have been so entirely deaf to  
"the Complaints of their Fellow-Plebeians, as not to have en-  
"deavoured to rescue them from the unreasonable Oppressions,  
"under which they laboured. On the contrary, those Members  
"of the Senate, who are celebrated for their Popularity, were  
"all Patricians; and AGRIPPA himself, who prevailed upon the  
"Senate at first to hearken to the Complaints of the poor Ple-  
"beians, and who was also instrumental in redressing their Grie-  
"vances afterwards, though born a Commoner, had undoubtedly  
"been long ennobled." [That is to say, (as the Dr. explains him-  
self) had, about sixteen Years before, been made a Patrician,  
in order to his Admission into the Senate, at the famous *Lection*,  
upon the Expulsion of the Kings.]

The Period to which the Dr. refers *the unhappy Divisions betwixt the two Orders*, cannot be a Period of more than five Years, namely, the Space of Time from the Death of *Tarquin the Proud*, in the Year 258 †, when the Senators began to oppress the poor † Fast. Cap.  
Commoners, to the Year 262, when the Affair of *Coriolanus* was in Dispute. For, says the Doctor, "From this Time, [the Time Essay, p. 98.  
"of that Dispute] the Members of the Senate seem to have been  
"chose indiscriminately out of the two Orders; the Office of  
"Tribune was not even insisted on as a previous Qualification."

I do not see, that the learned Writer can infer any thing, to his purpose, from the SILENCE of the Historians, in their His-

† Insignis hic annus est Nuncio Tarquinii mortis.—Eo nuncio erecti Patres, erecta Plebes. Sed Patribus nimis luxuriosa ea fuit lætitia: Plebi, cui ad eam diem summâ ope inservitum erat, injuriæ à primoribus fieri coepere. Lib. 2. c. 21.

tories of those five Years, concerning *Plebeian Senators*, i. e. Senators of Plebeian Race, and admitted into the Senate, without being previously declared Patricians. For he may observe the same SILENCE in their Histories of, at least, the fifty Years, which next followed the banishment of *Coriolanus*, and in which the Dr. supposes, that there were *Plebeian Senators*, (Senators, Plebeians by birth, and who had never passed through the Ceremony of being made Patricians) and in which there were likewise *unhappy Divisions betwixt the two Orders*.

§ Fast. Cap.  
Essay p. 99.

Well, but we find, that, in the Year 353, § there was one *P. Licinius Calvus*, who, though he had never been in any Magistracy, was an old Senator, and though a Senator, was still a Plebeian. \*

Here then is a manifest Deviation from the ancient Rule, according to which every Plebeian, raised to be a Senator, was ipso facto raised above the Order of Plebeians, and his Descendants were stiled Patricians. When did this Change begin? When was it first settled, that a Plebeian, though admitted to be a Member of the Senate, should still be counted a Plebeian?

I will not pretend to answer this Question satisfactorily; but, shall leave the following Observations and Conjectures with the Reader, to take their fortune.

CHUSING *Livy* for my Guide, I must, of course, consider *Dionysius's Mob of Kings*, his *Crowd of high-born, illustrious, + opulent Nobles, renowned for Virtue, who put themselves in the Train of Romulus, a Boy of about seventeen Years of Age, to go seek their*

\* Non tamen ultra processum est, quam ut unus ex plebe usurpandi juris causa, *P. Licinius Calvus*, Tribunus Militum consulari potestate crearetur: — Vir nullis ante honoribus usus, *vetus tantum Senator*, et ætate jam gravis. Liv. l. 5. c. 12.

Dr. Middleton thinks it certain, from the words which *Livy* puts into the Mouth of the Dictator *Quinctius Cincinnatus* in the Year 313, that the Corn Merchant, Sp. *Mælius*, though a Plebeian, was a Senator: — Ut quem senatorem conquire civitas vix posset, regem ferret, Liv. l. 4. c. 15. But perhaps it may be questioned whether those words *must* have that meaning. M. *Crevier* seems to think otherwise, when in his note on the words *vetus tantum Senator* (in the foregoing citation) he says, Hoc primum loco fit mentio apud *Livium* Senatoris Plebei. Quo autem tempore aditus in Senatorium ordinem Plebeiis patuerit, non satis constat, nec certi quidquam hac de re apud antiquos auctores reperitur. Liv. l. 5. c. 12.

n. 3. Neither does Dr. *Chapman* mention this *Mælius* as a Plebeian Senator.

† D. H. p. 83. Τῆς ἐπιφανείας κατὰ γένος καὶ δι' ἀρετὴν ἐκείνου, &c. vid. sup. p. 20, & p. 25.

For-



*Fortune* \*, as a meer Fable invented by the Historian to flatter † the Romans and deceive the Greeks. When Romulus selected, out of his Followers, only one hundred, to be his Council of Elders, *Livy* seems to think, it might be, because he had not a greater number of OLD Rogues in his Gang, even after he had, to the Sweepings of *Alba*, added the Offscourings of the adjacent Countries, carefully collected by the means of his Asylum. Dr. *Chapman* writes, that “ the Direction given to the People [ac- Essay p. 101.  
“ cording to *Dionysius*] upon that Occasion [the Institution of  
“ the Senate] and probably every subsequent Occasion, was to  
“ chuse Persons, who were arrived at the most prudent Age, ‡  
“ and this was certainly pretty late in life, as Wisdom was then  
“ esteemed the Child of a long experience. As a further proof  
“ of this; the Name of *Senate* is said to have arisen, from its  
“ being, in Fact, an Assembly of § *Old Men*; and the Title of

\* These illustrious Alban *Adventurers* were of a quite different temper from the Alban Nobles, whom Tullus Hostilius constrained to remove from the place of their Nativity. *Dionysius* represents these latter as extremely unwilling to exchange their old settlements at *Alba* for new ones at *Rome*, though *Rome* had now begun to make a figure, and *Alba* was at her Mercy. Vid. D. H. p. 171.

† An ingenious writer has observed, that notwithstanding all the foolish pains *Incert. de*  
*Dionysius* took, to deduce the first Romans from a Greek Origin and to represent *Thist. Rom.*  
them as a respectable Society, he could not gain credit even with those he meant ch. 12.  
to please by his senseless flattery.

*Juvenal* expresses the opinion that prevailed among his countrymen, concern-  
ing their own origin, in the following lines. (Sat. 8. in fine.)

Et tamen ut longè repetas longèque revolvās  
Nomen, ab infami gentem deducis asylo.  
Majorum primus quisquis fuit ille tuorum,  
Aut Pastor fuit, aut illud quod dicere nolo.

‡ Τοὺς ἐν τῇ φρονιμωτάτῃ τότε οὐκ ἦσαν ἡλικία. *Dionys. l. 2. c. 12.*

The Roman Law (says *Ayliffe* in his *Pandect. l. 2. tit. 1.*) gives so great de- Essay, p. 100.  
ference to old age, that according to the Code, if any one shall say, that an old  
man has not more prudence than a young one, he is bound to prove it by fifteen  
witnesses.

§ Senatores a senectute dici satis constat—itaque etiam Patres appellati sunt. p. 101.  
*Festus* in voce *Senatus*.—Centum ex Senioribus elegit, quorum consilio omnia  
ageret; quos Senatores nominavit propter senectutem. *Eutrop. l. 1. 1.*—In agro  
erant tunc Senatores, id est, senes. *Cicero* de Senectute.—Delecti quibus corpus  
annis infirmum, ingenium sapientia validum, reipublicæ consultabant. *Sallust.*  
*Bell. Catilin.*

" *Fathers* \* to have been given them at first, upon account of  
 " their Years, though it was converted into a mere Appellation of  
 " honour afterwards. This particular was, however, much less  
 " regarded afterwards; for *after the Expiration of the Regal Go-*  
 " *vernment*, if not sooner, the Senate was generally supplied from  
 " the *Equestrian Order*, of which few Persons continued Mem-  
 " bers, after their *forty-sixth Year*, † and till then, they were  
 " young Men, according to the *Roman Estimation*."

To proceed: *Romulus's Aldermen*, his Senators, were, out of respect, stiled Fathers, PATRES; and *their Descendants*, says *Livy*, were called PATRICIANS. According to this Account, the Vacancies which happened in the Senate, during the Reign of *Romulus*, could not be filled up with *Patricians*. Nor probably, in any of the following Reigns, were there *Patricians* enough to supply the Senate. For as to the 100 *Sabine* Senators, added to the *Roman*, (and whose Children would of course be *Patricians*) *Livy* never read of their Creation, or rejects what he had read of it, as fabulous. Dr. *Middleton* takes notice of this.—" Upon the  
 " Peace and League of Union made between *Romulus* and *Tatius*,  
 " King of the *Sabines*, the number of the Senate, as *Dionysius*  
 " writes, was doubled by the Addition of an hundred new  
 " Members from the *Sabine* Families; all chosen by the People  
 " in the same manner as before: in which Account, he says, all  
 " the old Writers concur, excepting a few, who declare the additi-  
 " onal number of *Sabines* to have been only fifty: which may serve  
 " as a *Specimen of the Diligence* ‡ of this Author's *Inquiries*:  
 " whereas

Essay, p. 101. \* Hi centum viri Senatores et Patres, honoris, benevolentiae, et ætatis causa, sunt dicti. Et sic in Anglia dicuntur Aldermanni.—Hinc etiam est Gallorum hodierna vox Seigneur, quasi Seniore[m] dicas &c. Nieuport. Rit. Rom. c. 2.

p. 102. † C. Tubero scripsit—Servium Tullium, ab anno septimo decimo, quod idoneos jam esse Reipublicæ arbitraretur, Milites scripsisse: eosque ad annum quadagesimum sextum juniores, supraque eum annum seniores appellasse. A. Gell. l. 10. c. 28.

‡ M. Dacier (in note 86, Plut. Life of Rom.) has furnished a *Specimen* of *Dionysius's want of diligence in his enquiries*: and it is where the Greek Historian is writing of this very *League of Union* made between *Romulus* and *Tatius*. One of the Conditions (says Plutarch) was, *Que les Romains prendraient le nom de QUIRITES*. M. Dacier's note is as follows. *Que chaque citoyen feroit appelé Romain en particulier, et que tous ensemble porteroient le nom de Quirites, dit Denys d'Halicarnasse; mais cet article est dementi par l'ancienne formule de la publica-*  
 tion



"whereas *Livy* is not only silent about this Augmentation of the Senate, but as your Lordship owns, *expressly contradicts it.*"—A most wonderful Specimen this, of the *diligence* of the Greek Historian in his *Inquiries*! Of the like diligence in *Livy's Inquiries*, an hundred Specimens might, I believe, be produced.

Dr. *Chapman*, in his *Essay*, writes thus,—"we are expressly p. 34. told, that the number of *Patricians* being doubled, by chusing as many *Sabines* into that Order, as there were *Romans* of it before, the PEOPLE afterwards, in an Assembly held by the *Curias*, elected a hundred of them into the Senate, which, by this means, was increased to twice the number, of which it consisted at its first Institution."

In a Note, at the bottom of the Page, the Dr. adds, "This account is given by *Dionysius* (L. 2. c. 47.) and is contradicted by no other Historian.—*Livy* has omitted the whole affair, which is the more extraordinary, as *Dionysius* adds, that this was a Point, in which almost all Writers of Roman History were perfectly agreed, except only, that some few made the number of additional Senators no more than fifty."

Below, \* is inserted the Passage, as it stands in *Dionysius*, that those, who have a more critical knowledge of the Greek than I have, may determine, whether the words *ολιγα δειν* cannot be construed to import, that some few Writers contradicted or omitted the whole account.

The Reader will observe, that, in this account, there are three material Articles.

1. That so many *Sabines* were chosen into the Patrician Order, as there were *Romans* of it before.
2. That, out of these *Sabine* Patricians, one hundred, or, at least, fifty were elected into the Senate. And

tion des enterremens, où l'on crioit, *ollus Quiris letho datus est*, ce qui prouve que chaque particulier étoit appelé *Quiris*. Plutarque a donc eu raison de ne pas suivre ici la tradition de Denys d'Halicarnasse.

\* Εδοξε τοις βασιλευσιν—διπλασιον τε προτερα ποιησαι τον των πατρικων αριθμον, προσκαλεξαντας συν τοις επιφανεσσι οικοις εκ των υπερειν εποικησαντων ισους τοις προτεροις νεωτερας, ους εκαλεσαν πατρικιους· εξ ων εκαλον ανδρας, ους αι φρατραι προεχειρισαντο, τεις αρχαιαις βουλευταις προσεγραψαν. περι μεν τωτων ΟΛΙΓΟΥ ΔΕΙΝ παντες οι συγγραφαντες τας Ρωμαικας ιστοριας συμπεφωνηκασιν· ολιγοι δε τινες περι τε πληθους των προσκαταγραφενων βουλευτων διαφερονται· ε γαρ εκαλον, αλλα περιηκοντα τας επεισελδοντας εις την βουλην αποφαινεται γενεσθαι.

3. That

*Observations on M. VERTOT's Answer*

3. That this Election was made by the PEOPLE in an Assembly of the *Curias*.

Now does it not appear incredible, that all these pretended Facts were recorded by *all* the old Writers, when we find that *Livy* not only is silent as to these Facts, but *delivers things absolutely inconsistent with them*? For this, I suppose, is what *Dr. Middleton* means, when he says, that *Livy expressly contradicts* the Report of *Dionysius*, in relation to the *Sabine* Senators. And, when *Dr. Chapman* says, that *Dionysius's Account is contradicted by no other Historian*, I presume, that, with regard to *Livy*, the *Dr.* means to assert only, that this Historian *does not mention* the Facts related by *Dionysius*; and that a Man cannot be properly said *expressly* to CONTRADICT *what he never speaks of*. But certain it is, that if what *Livy* says concerning the *Curia* and the *Senators* be true, what *Dionysius* reports must be false. For, according to *Livy*, there were no *Curia* in being, to elect Senators, either in the beginning of *Romulus's* Reign, or at the time of the League of Union between him and *Tatius*; \* and the *Senate* consisted of no more than 100 Members at the Death of *Romulus*. †

In many instances, where the old Writers differed, *Livy* informs us of it, though the Matters be of much less Moment than those now in question; and it is very strange, that he should say nothing of the Augmentation of the Senators from 100 to 200, if any one Author, *worthy of Attention*, had reported it; and it is the more wonderful, as he speaks of the particular Terms of the Union. ‡

I shall be bold therefore, upon the Authority of *Livy* (uncontradicted by any ancient *Latine* Writer) to suppose, that till the Reign of *Tullus Hostilius*, which, by the old Chronology, began

\* Ex bello tam tristi læta repente pax, cariores Sabinas viris ac parentibus, et ante omnes Romulo ipsi fecit. Itaque quum populum in curias triginta divideret, nomina earum curiis imposuit. Liv. l. i. c. 13.

† Itaque Rem inter se CENTUM Patres—consociant. Fremere deinde Plebs multiplicatam Servitutem, CENTUM pro uno Dominos factos. Liv. l. i. c. 17.

M. Dacier observes, that *Flavius Vopiscus*, in his life of the Emperor *Tacitus*, adheres to *Livy* in this particular. Vie de Numa. Note 15.

‡ Nec pacem modò, sed et Civitatem unam ex duabus faciunt; regnum consociant; imperium omne conferunt Romam. Ita geminatà urbe, Ut Sabinis tamēn aliquid daretur, QUIRITES a Curibus appellati. L. i. c. 13.

about



about eighty Years after the Birth of Rome, the Roman Senate consisted of no more than one hundred Persons.

Dr. Middleton thinks it probable, that the number of *Albans*, Vid. Supr. p. 29. who, on the Demolition of their City, are said to have been admitted into the Roman Senate by King Tullus, "was no more than what supplied the Vacancies then subsisting, so as to fill it up to its settled Complement." [which the Dr, giving credit to Dionysius, believes to have been then 200.] And Dr Chapman writes thus, (P. 38. Note e.) "My reason for supposing the *Albans* were only chose into vacant Seats is, because by the words \* of the Decree, which determined the Fate of *Alba*, (See \* *ἴσ' ὅτι ταῦτα* *Dionysius*, l. 3. c. 29.) they are only declared capable of being *δοσέμενα* *Ρωμαίοις*—*βου- λης* *μετεχουσιν* *και* *αρχας* *λαμβάνειν* *της* *δε* *της* *οικυς*, *Ιουλιος* &c. chose into the Senate, and public Offices; whereas if they had been to be super-added to the former Number, it would probably have been so expressed. Manutius himself is also of Opinion, that the Senate was not increased upon this Occasion. Manut. de Senatu, Rom. c. 1."

That the three learned modern Writers, above-named, should, in the present instance, have no regard to what the Latine Historian has delivered, merely because it does not agree with the romantic Tale of the Greek Rhetorician, is, to me, Matter of Astonishment.

It is affirmed by Livy, as clearly and as distinctly as any thing can be affirmed, that King Tullus augmented (not the + Patrician Order, which he never speaks of in his History of the Kings, but) the ORDER of the Senators, the PATRES; and he seems to say, it was so much augmented, as to make a more spacious Senate-House necessary for holding them. Principes Albanorum in PATRES, ut ea quoque Pars Reipublicæ L. 1. c. 30. CRESCERET, legit, Julios, Servilios, Quintios, Geganios, Curiatios,

+ The Patricians and Plebeians, tho' distinct races of men, were not, in the times of the KINGS, two opposite Factions: At least, there is no evidence that they were. It is observable, that LIVY, after telling us, that the 100 Senators of Romulus were, out of respect, called PATRES, and that their Descendants were called PATRICIANS, never uses the terms Patrician and Plebeian in any part of his History of the Regal State:

The PATRES, or Senate;

The PLEBS, containing the Knights and all the citizens, except the Senators; and

The POPULUS, containing both Senate and Plebs;

these are the Distinctions we find in Livy's History of the Kings of Rome.

Claelios: *TEMPLUMQUE ORDINI ab se AUCTO CURIAM fecit, quæ HOSTILIA usque ad patrum nostrorum ætatem appellata est.\**

By these words it is plain, beyond a doubt, that (according to *Livy*) some ORDER was *increased* at this time, and that the ORDER, which was *increased*, was the ORDER for which the CURIA HOSTILIA was provided; and consequently that it was the *Senatorial Order*: For every body knows, that the CURIA HOSTILIA was the *Senate-House*, and not a Place for the Meeting of Patricians that were not of the Senate.

And further, it is probable, that the Order of Senators was *considerably* increased at this time: because (as I before observed) the *Augmentation* seems to have occasioned the providing a new Senate-House to hold them.—*Ordini Aucto Templum Curiam fecit.* Nor does *Livy* say, that *Julius, Servilius, &c.* six Men, were admitted into the Senate, but the *Julii*, the *Servilii*, &c. the Men of six Families; each of which might probably furnish many Persons worthy to sit among the PATRES. And in this case, those who contend for the admission of 100 *Sabines* into the Senate, in the time of Romulus, will be hard put to it to settle their account,

\* Notwithstanding the certainty of *Livy's* meaning in this passage of his History, M. Crevier (on the present occasion, full of faith in Dionysius) makes the following note on the words *Ordini ab se aucto.*] *Eo sensu dici videtur hic auctus à Tullo ordo Senatorius, quod earum gentium ab eo numerus auctus esset, ex quibus Senatores legébntur. Neque enim verisimile est ipsorum Senatorum numerum tunc auctum fuisse. Nam imperante Romulo, post ictum cum Tatio scedus Senatorum numerum ad ducentos accrevisse perquam probabile est.—Tarquinius Priscus postea Centum addidit—tuncque trecentos fuisse senatores ex Dion. l. 3. constat. Itaque quod supra dicitur, à Tullo Principes Albanorum in Patres lectos fuisse, id ita intelligendum videtur, ut Patriciorum ordini adscripti fuerint: nisi si qui fortè loca tum in ordine Senatorio vacantia expleverint. Note 3. l. 1. c. 30.*

The sum and substance of all this is, That *Livy* must not (in the above cited passage) be supposed to mean what his words, by all the rules of Language, necessarily import, because, in that case, he would contradict what is said by *Dionysius*, [perhaps the boldest Inventor of Facts and Circumstances of Facts, and the most inconsistent and absurd writer that ever disgraced the name of *Historian*. In support of this Censure many proofs may be offered: At present I shall only take leave to refer to the Remarks (in the *Quarto Rom. Hist.*) on the Accounts, which the Greek Historian has left us, of the Dispute concerning *Coriolanus* (B. 2. chap. 13.) and of the public Trial of *Spurius Cassius*. (chap. 14.) and of the Plot of the Tribunes against the Senate. (chap. 21.)]



and make the Senate consist of only 300; after the Creation of Tarquin's 100 Senators Minorum Gentium.

Dr. Chapman, in his *Essay* (p. 93.) quotes a Passage out of *Festus*, importing, that the Consul *Valerius Poplicola*, in the first Year of the Commonwealth, chose into the Senate 164 Persons of Plebeian Families, because Patricians were scarce.\* If Patricians were, at that time, too scarce to furnish 164 Men for the Senate, we must necessarily believe, that the noble Order had been ever, from its beginning, extremely unfruitful; or we must give no Credit to *Dionysius's* Tale, concerning the first Romans. According to him, the Patricians were a numerous Body in the beginning of the Reign of *Romulus*; so numerous, that out of these were taken all the Senators, the Magistrates, the Ministers of Religion, and the Patrons: And, on the League of Union between *Romulus* and *Tatius*, so many Sabines were created Patricians as the amount of all the Roman Patricians then existing. To the Posterity of all these let us add the Descendants of the Alban † Nobles, admitted into the Senate of Rome by King *Tullus Hostilius*; and the Descendants of the Elder Tarquin's 100 Senators, who, being Plebeians by birth, became, by Creation, a new Source of Patricians: And let us further add the Descendants of all the Plebeians who were occasionally made Patricians, in order to their Admission into the Senate. All these supposed and considered, is it in any degree probable, that Patricians were so scarce, at the Commencement of the Commonwealth, as not to furnish 164 Men?

\* Qui Patres, qui Conscripti vocati sunt in curiam, quo tempore Regibus urbe expulsi, P. Valerius Consul propter inopiam Patriciorum ex Plebe adlegit in numerum Senatorum Centum et sexaginta et quatuor, ut expleret numerum Senatorum trecentorum. *Festus* in V. Qui.

† If, on the Union of the Romans with the Sabines of *Cures*, so many of the latter were created Patricians, and, out of these, so many were created Senators as *Dionysius* reports; one should naturally imagine, that, on the Removal of all the Inhabitants of *Alba* to *Rome*, by which the number of Roman Citizens was doubled [duplicatur civium numerus] the number of the Patricians would have been doubled, and the number of the Senators likewise. *Alba* had been long the capital of *Latium*, and had been the mother of thirty cities, and, in her latter days, of *Rome*, that destroyed her. Her principal citizens, by being incorporated with the best of the Romans, would be an honour to them. And doubtless if the Senatorian Order was ever increased to 200 before the reign of Tarquin the elder, it was on the demolition of *Alba*; and not on the Union of *Tatius's* Sabines, from *Cures*, with the banditti at *Rome*.

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If

Liv. l. i. c. 30.

*Observations on M. VERTOT's Answer*

If we confine, as doubtless we ought, the Title of *Patrician* to those \* only, whose Ancestors had been actually *Senators*, and if we reject *Dionysius's* Creation of 100 *Sabine* Senators, then indeed there might be a scarcity of Patricians at the Time of the Regifuge. But even these Suppositions will not account for the Consul's chusing into the Senate the whole † number of 164, out of the

\* That the Romans, either during the *Regal State*, or during the *Free State*, ever thought of *Patrician-making* (that is, of giving to men meanly born, or to strangers, the Title of PATRICIANS, thereby to ennoble them, or to qualify them to be chosen into the Senate) I have not found in any antient Latine Author. Indeed the Emperor Claudius (in Tacit. Annal. l. xi. c. 24.) speaks of his Ancestor, the first Appius Claudius, as *adscitus in familias Patriciorum*; but it is evident from his words presently following, that he means only to say, that his ancestor was received into the *Senatorian Order*—*Neque enim ignoro Julios Albâ—in SENATUM accitos*. And his whole discourse is on occasion of filling up the vacancies in the SENATE. Cum de supplendo senatu agitaretur,—Princeps—“vo-  
“cato Senatu ita exorsus est: Majores mei, quorum antiquissimus Clausus ori-  
“gine Sabina, simul in civitatem Romanam, et in familias Patriciorum adscitus  
“est—Neque enim ignoro” &c. So Livy makes Canuleius, the Tribune, say,  
“Claudiam certè gentem, post reges exactos, ex Sabinis, non in Civitatem  
“modo accepimus, sed etiam in Patriciorum numerum. Ex peregrinone Pa-  
“tricius, deinde Consul [not deinde Senator,] fiat? Civis Romanus, si sit ex  
“plebe, præcisa consulatus spes erit?” But it is plain from the whole tenor of this Tribune's Speech, and from the LAW that gave occasion to it (*Patribus cum Plebe connubii jus nec esto*) that the words PATRES and PATRICII are here used indifferently to express sometimes the *Senators*, sometimes the *whole Patrician body*. And, that Livy, by the word *Patricius* when applied to Appius Claudius, means *Senator*, is highly probable from the Historian's account of Appius's first coming to Rome; by which we find that he was admitted into the SENATE; and that in a short time he became one of the principal Members of that Assembly.—ab Regillo magnâ clientium comitatus manu, Romam transfugit.—Appius inter PATRES lectus, haud ita multo post in principum Dignationem pervenit. Lib. 2. c. 16.

After the destruction of the *Free State*, and when by civil Wars, and Massacres and Proscriptions, the Patrician Families were almost all extinct, Tacitus tells us, that *Julius Cæsar*, *Augustus*, and *Claudius* did successively give the title of Patrician to some Plebeians, but not as a qualification to sit in the Senate; for some of those on whom Claudius conferred it were the oldest men of that Assembly. Iisdem diebus, in numerum Patriciorum ascivit Cæsar [Claudius] vetustissimum quemque è Senatu, aut quibus clari parentes fuerant: paucis jam reliquis familiarum, quas Romulus majorum, et L. Brutus minorum Gentium appellarunt, exhaustis etiam quas Dictator Cæsar lege *Cassia*, et Princeps Augustus lege *Senia* sublegere. Tacit. Annal. lib. xi. c. 25.

† M. Crevier, on this occasion, wants entire faith in *Dionysius*: For, commenting on the word *explevit* in Livy (l. 1. c. 1.) he writes thus. Tarquinius Priscus trecentorum Patrum numerum expleverat.—Verùm Tarquinii Superbi crudelitas ad eam paucitatem Patres redegerat, ut hoc tempore soli sex et triginta  
supra



the *Plebeians*: Perhaps, by the Words *propter inopiam Patriciorum*, *Festus* meant, that there remained no Patricians, worthy to sit in the Senate, except the Senators then in Place. It is hard however to think, that this was his meaning; and it is still harder to believe the Fact true: Indeed the very Notion, for the sake of which *Festus* (as I suppose) has recourse to a *scarcity of Patricians*, is, in all likelihood, no better than a Dream: Namely, that, during the Regal State of Rome, the Senatorian Dignity had, by Law or established Custom, been confined to the Patricians.

Is it probable, that *Servius Tullius*, who threw all the Power of the Government into the Hands of the *Richer* sort, without regard to Pedigrees, \* and Blood, should confine his Choice of Senators, during forty-four Years, to the Patrician Families? Or, supposing the right of chusing Senators to have been in the *Comitia* by Centuries, is it not very improbable, that the Majority of the Centuries, which consisted of Patricians and Plebeians, and in which the Plebeians were the more † numerous, should chuse none but Patricians into the Senate? And is it not still more improbable, that if, before the Institution of the *Centuriate Comitia*, the Choice of the Senators had been in the *Comitia* by *Curia*, ‡ where the *Plebeians*, without any Competi-

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tion,

*supra centum remanerent. Brutus igitur, sive Valerius, sive uterque, variant enim auctores, centum et sexaginta et quatuor è primoribus Equestribus gradus in Senatum legit, sed ita ut qui eorum de plebe erant, prius in Patriciorum ordinem adscriberentur. DIONYSIUS eos omnes qui tum in Senatum lecti fuerunt, de PLEBE fuisse scribit: parum fortasse probabiliter.*

\* 'Tis probably this consideration which induces Zonaras to say, that *Servius Tullius* chose some Plebeians into the Senate.

† That the Plebeians were more powerful than the Patricians, even in the *Comitia* by Centuries, is asserted in the invective which *Dionysius* puts into the mouth of *Coriolanus* against the Tribunes. This Invective was spoken when *Comitia* by Centuries had succeeded to *Comitia* by *Curia* for public affairs; and *Comitia* by Tribes had not yet been introduced.—*επειδη εγγισαν ως εν τη ψηφω ειναι απαν το της πολεις κρατος, ης αυτοι κραησασι πλειεις ημων οντες. Lib. vii. p. 436.* Indeed the Historian afterwards expressly contradicts, in spite of fact and common sense, what he had made *Coriolanus* say: *Ειρηται δε και προλερον οτι εν μεν ταις φυλετικαις εκκλησιαις οι δημοτικοι και πενητες εκραβαν των πατριμιων εν δε ταις λοχιτισιν εκκλησιαις οι πατριμοι, παρα πολυ των αλλων ελαττους οντες, περιησαν των δημοτικων. Lib. xi. p. 726.* On this passage, see the remarks in *Rom. Hist. Vol. I. p. 369. 3d edit.*

‡ Dr. Chapman (in p. 84, 85, 86. of his Essay) writes thus: "The *Comitia*, held for the Election of Senators, seem to have been different at different times.

" In

tion, were absolute Masters; I say, is it not still more improbable, (especially if we suppose an Opposition of Interests between the two Orders of Citizens) that the *Curia* should, in their Choice of Senators, confine themselves to the Patrician Body?

Inconclusive as this Argument may be (without collateral Aid,) Dr. *Middleton* would not, I presume, have been forward to deny its cogency: Because, in p. 51. of his Treatise, speaking of *Sp. Maelius*, and *P. Licinius*, he says,—“ If we should ask  
“ then, how these two Plebeians came to be made Senators,  
“ without having born any Magistracy, there is no answer so  
“ probable, as that they were added to the Roll of the Senate,  
“ with other eminent Citizens, by the Command of the People,  
“ on some extraordinary Creation. For, *if the Nomination had*  
“ *wholly depended on the Will of any Patrician Magistrate, it is*  
“ *scarce to be imagined, that he would have bestowed that honour*  
“ *on Plebeian Families.*”

But to return to *Livy*: Though we learn nothing from him concerning the Plenty or Scarcity of Patricians, at the time of the Regifuge, we have great reason to conclude, from his account of *Tarquin's* Conduct, that very few *Senators* were then remaining. For, if this King, who reigned twenty-five Years, filled up no Vacancies in the Senate with new Members, this Assembly, supposing it to have consisted, at his Accession to the Throne, of 300 Elders (many of them in the last Stages of Life, as must have been the case) would, by the common course of Nature, be reduced to a very small Company, at the time of his Expulsion. And, if to this Consideration we add, that the Tyrant had

“ In the first instance, the People were assembled by *Curias*; and as no other  
“ *Comitia* were in being, till the reign of *Servius Tullius*, we may presume,  
“ that all Elections into the Senate before that time, were made in *Comitia Curiata*. Afterwards, *Manutius* seems to think, the *Comitia Centuriata* were  
“ used upon these occasions; the greater Magistrates being chose, wars resolved  
“ on, laws enacted, and all other important affairs determined in those assemblies: and this is the more probable, for this further reason, that the *Comitia*  
“ *Curiata* begun gradually to grow into disuse from that time.—If *Zamoscius's*  
“ conjecture be right, that all other Elections of the Senate were made in the Forum, because *Buteo's* was, 'tis probable that they were made also in the *Comitia Curiata*; for these *Comitia* were always held in the Forum, a part of it  
“ stiled the *Comitium* being assigned for that purpose; whereas not so much as  
“ a single instance can be given, of the *Comitia Centuriata* being held there.”

mur-



murdered a great number of the Members, we can hardly suppose, that, of the 300 Senators of King *Servius Tullius*, there remained a *Tenth* or, perhaps, even a twentieth Part. And indeed that the Number was very inconsiderable, may be gathered from the manner of the Revolution, the SENATE never once appearing in *Livy's* Relation of that Event.† It is wholly brought about

† Even Dionsysius, who is wonderfully circumstantial in the story, and affects to make every thing be done as methodically, as if it were a time of perfect tranquillity and order, keeps the SENATE out of his Reader's sight during the whole Transaction: There do not appear any other Senators than Brutus, Valerius, Collatinus and Lucretius. Patricians there are who stand about Brutus when he is haranguing the multitude; and, in the name of those Patricians (as I suppose) as well as in the name of his three principal associates, he says, "We the Patricians have unanimously decreed to deprive Tarquin of his power" *Ταρχυνιον—αφελεσθαι την εξουσιαν βεβηλευμεθα νυν συνελθουτες οι πατριμοι*. But when the multitude, inflamed with anger, and a spirit of revolt, call out for arms: "Fair and softly (then says Brutus,) be pleased first to confirm a decree of the SENATE, proscribing Tarquin and the Royalty." At what time this decree was made, we are not told; nor whether the matter of it was debated in the house; nor by whom the Senate was convened; and yet this last particu-  
lar the Historian ought not, for any consideration, to have omitted: because without a Magistrate, who has a right to assemble the Fathers, we are all undone, the Revolution must be at a stand, and Tarquin will come home before things are settled: For the Historian, being very faithful and exact, informs us, that when Brutus had spoken to Valerius and his two other Associates of the expediency of assembling the People and engaging them to abolish the royalty, *Valerius* gravely answered, "All that you have said, *Brutus*, seems to me very reasonable; yet there is one thing, concerning which I could wish to be satisfied. Who is there among us that can legally assemble the Curiae, and take their votes? For this is the business of a Magistrate, and not one of us has any Magistracy."—"Yes," (replied Brutus), I am Commander of the *Celeres*, and, in virtue of my office, I can legally assemble the people as often as I please." Now we are to suppose, that *Valerius* was ignorant of this; and likewise that he believed the city to be left without a *Præfect* in the king's absence: and, further, we are to doubt whether, if Brutus had not happened to be in an office which gave him a LEGAL power to convene the people, the Revolution could have been effected. But I shall not dwell, at present, on the diligence and accuracy, and exactness, and prating humour of the Greek Rhetorician. Only one thing I shall mention, as a specimen of his judgment: That, in the very long speech, which he puts into the mouth of Brutus, and in which the orator makes a contrast between *Servius Tullius* and Tarquin, styling one the *most just* of princes, the other the *most unjust*, he gives, as a principal proof of Tarquin's injustice, that he did what *Servius Tullius* had done before him, namely, seize upon the Government without being elected to it. To this specimen of the Historian's judgment I shall here add a specimen of his exactness; because it relates to the same subject. He tells us that

p. 270.

p. 271.

p. 275.

p. 266.

Vid. Liv. Lib. 1. in fine.

p. 271.

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about by the Activity and Abilities of *Brutus*, and *Valerius*, assisted by the Husband and the Father of *Lucretia*. The *Latine* Historian does not mention the Senate, till after the Revolt is compleated, two Consuls chosen by an Assembly of the Centuries, and all the People sworn never to suffer Kings at *Rome*. Then *Brutus*, who had prevailed to have the Consular Government introduced, according to the Plan laid down in the Commentaries \* of King *Servius Tullius*, followed the same King's political Principles in re-establishing the Senate, or rather, in making a new one. For with the Approbation, and by the Command of the People, [jussu Populi] he formed a Senate out of the principal Men of the *Equestrian* † Order, that is to say, out of those Citizens, who were reputed the Richest; for the Knights were at the Head of the first of the Six Classes: I say reputed to be the richest; because, as there had been no *Census* during the whole Reign of *Tarquin*, the real Value of Mens Estates could not be certainly known. [This, perhaps, may account for our finding hereafter, that, among the Knights, at this time created Senators, there were some very poor.]

And in order to throw the more Power into the Hands of the Rich, *Brutus* augmented the Senatorian Order to 300, a

that *Servius Tullius* possessed himself of the government without being legally chosen to it; that the Senate formed a design to dethrone him; that he discovered their design and contrived to obtain the suffrages of the people, assembled by *Curia*, for his retaining the crown; but that the Senate refused to confirm the election. After this, the historian represents the King pleading his cause, against the pretender *Tarquin*, before the SENATE; to whom he boasts, that he has been a more mild and gracious king than any of his Predecessors; and he adds, "I have not even retained all THE POWER WITH WHICH YOU ENTRUST-

" ED ME."

p. 213.

Οὐκ ἀξιοῦντές αὐτον ἐαυτῶν τινα μηχανήσασθαι βασιλικὴν δύναμιν, μὴ τε βυλῆς ψήφισμα-  
μενης, μήτε τῶν ἄλλων τῶν κατὰ νόμον ἐπιτελεσθέντων.

p. 218.

Ἀπασαὶς δὲ ταῖς φράταις κριθεὶς τῆς βασιλείας ἀξίος, χαιρεῖν τὴ βυλὴ φράσας, ἣ ἐκ  
ἡρώσεν ἀποκινῶσαι τὰ τε δημόσια πλῆθους, ὥσπερ αὐτὴ ποιεῖν εἶδος ἦν, κατέσχε τὴν  
ἀρχὴν.

p. 239.

Ὅς γε καὶ τὴν ἐξουσίαν, ἣν ὑμεῖς ἐδώκατε μοι, πατέρων φυλαττόντες παραδοχάς, ἐκ  
ἀπάσης ἐβηλομένην εἶχεν.

\* Duo Consules inde Comitibus centuriatis à præfecto urbis ex commentariis  
Servii Tullii creati sunt. Liv. Lib. 1. in fine.

† This makes it probable, that it had been the practice of King *Servius* to  
choose his Senators out of the Knights.

number



number that much exceeded its Complement in the time of the Kings\*.

It may be worthy of Remark, that *Livy*, in speaking of the *Lection*, at this time made, of Senators, uses an Expression, which he does not use in any other instance, where the Business is either filling up Vacancies in the Senate, or augmenting the Senatorian Order. He tells us, "that King Tullus Hostilius chose, into the Assembly of the Fathers, the chief Men of the Albans. †—That the Elder Tarquin chose, into the Assembly of the Fathers, ‡ 100 Persons, who were afterwards called Patres minorum Gentium.—That 177 Persons were, by the Dictator, Fabius Butco, chosen into the Senate." § But the Historian, speaking of the *Lection* of Senators by Brutus, writes thus: "It is a Tradition, that the Persons, chosen into the New SENATE, || [in novum Senatum lectos] were called Patres Conscripti." These words seem to import, that the Consul formed, at this time, what might properly be called A NEW SENATE; because there remained not Members enough of the old Corps\*\* to constitute a legal Assembly for doing business.

\* It is to this sense that Pighius interprets those words of *Livy*,—*Patrum numerum—ad trecentorum summam explevit*.—Hic [*Livius*] in eo discrepat à *Dionysio*, quòd velit centum à *Romulo* tantum, ducentos à *Prisco* Regibus esse lectos, Brutum postremò primum consulem trecentos fecisse; qui numerus per multos annos deinde observatus est. Pigh. Annal. Lib. 2. p. 69.

† Principes Albanorum in Patres legit [*Tullus Hostilius*.] L. 1. c. 8.

‡ Centum in Patres legit [*Tarquinius Priscus*.] L. 1. c. 30.

§ 177 in Senatum lectis [ab Dictatore Fab. But.] L. 23. c. 23. Here the new Members were the Majority of the Senate, and exceeded the number created upon the Regifuge, if that account, which *Plutarch* had somewhere met with, but which he delivers as uncertain, be right: Yet the Latine Historian (as we see) says only in *senatum* lectis, he does not say in *novum senatum*.

|| Deinde quo plus virium in senatu frequentia etiam ordinis faceret, cædibus regis deminutum Patrum numerum primoribus equestris gradus lectis, ad trecentorum summam explevit. Traditumque inde fertur, ut in senatum vocarentur, Qui Patres, quique Conscripti essent. Conscriptos, videlicet, in novum senatum appellabant lectos. L. 2. c. 1.

\*\* It may well be questioned whether Brutus or any one of the 4 principal leaders of the revolt was a senator, at the time of Tarquin's expulsion. Brutus must be supposed 70 years old at that time, if a senator of the creation of K. Servius Tullius; and yet he is represented as a companion of Tarquin's sons, and as a vigorous champion in battle.

And

And this may be the reason, why the few Senators, who did remain, never appear, *as a Senate*, during the Revolution.

As the recent Provocation, given by the Tarquins, and the artful Management of Brutus, on that Occasion, had made the Romans *unanimous* in proscribing both the King and the Royalty; so the *Lection* of the principal Men of the *Equestrian* Rank into the *New Senate*, did wonderfully conduce (as Livy informs us) to the preserving Concord and Harmony between the *Fathers* and the *Commons*. Id mirum quantum profuit ad concordiam Civitatis, jungendosque Patribus plebis animos. L. 2. c. 1.

Three Reasons may be assigned, why the *Lection*, spoken of, produced the Effect attributed to it.

1. The principal Knights were the richest, or reputed the richest Men of the State: And respect from the Multitude has ever attended, and will ever attend, riches in all Countries; but especially where the Laws have placed the supreme Power in the Hands of the *Rich*, as such; and this had been done, at *Rome*, by those Institutions of *Servius Tullius*, which the *Romans*, at this time, made the Rule of their Proceedings.

2. The Commonalty of *Rome*, poor at the Revolution, grew poorer every Day, by reason of the difficulty of the Times; and those rich Knights, now Senators, supplied, by Loans, the Necessities of the Indigent; and, during fourteen Years, put them to no trouble on account of the Debts they contracted. On the contrary, while *Tarquin* lived, and the Senators were rooting themselves in Power, they used all possible means to please and oblige the Commons.—Plebi, cui ad eam diem Summâ ope in-servitum erat.—

3. A third reason, why the *Lection* of Senators out of the Body of the Knights conduced to maintain a good Understanding between the *Senate* and the *Commons*, during the first Years of the Republic, I take to have been, That this *Lection* was with the *unanimous Approbation* of the *People*, and even by their Authority or *Command, jussu Populi*. For, as there was no Senate to comptrol the Resolutions of the Multitude, *Brutus* and his Colleague could make no Regulations that would bind the Community, but what the Community itself consented to and authorized. And it is highly probable, that, in the present unsettled and precarious State of things,



Things, the Consuls, for their own personal Security, as well as for the more effectual furtherance of their political Scheme, would take the PEOPLE's Direction in the forming of a *New Senate*: Not that I suppose the Individuals to have been named by the PEOPLE, but that the PEOPLE (agreeably to the Desire of the Consuls, and to the Commentaries of King *Servius*) signified their Pleasure, that the Consuls should form the *New Senate* out of the *Equestrian Body*; and that this is the meaning of the Words *JUSSU POPULI* in the SPEECH of *Canuleius* the Tribune: And I further conjecture, that to this same *Lectiō* of a *New Senate*, upon the Expulsion of the Kings, and to this alone, relate those Words of *CICERO* (pro Sext.) *Deligerentur autem in id Consilium ab (or ex) universo Populo* \*.

The Causes, which have been mentioned, of Harmony among the *Roman* Citizens, during the first Years of the Republic, are what I suppose to have been contained in the *Lectiō* of a *Senate out of the Rich Knights*: But to these Reasons of Concord may be added others. A common danger made it necessary for all the Citizens to unite in a common Defence; and we may add, as a Negative cause of Union, that there was not, at that time, any ground of Disunion, any Competition of opposite Interests. The Distinction of Patricians and Plebeians, as two FACTIONS in the State, had not yet taken Place. We read of no such thing in the History of the Kings. The first † civil Diffension at *Rome* was between the *Poor* and the *Rich*, the *Borrowers* and the *Lenders*,

\* I shall have occasion hereafter to examine more particularly into the strength of these Passages, which Dr. *Middleton* has chosen for the main Pillars of his Hypothesis, but which, to my Apprehension, cannot with any appearance of Reason be so construed as to serve his Purpose.

† *Bellum Volscum imminabat, et Civitas secum ipsa discors intestino inter PATRES PLEBEMQUE flagrabat odio, maxime propter nexos ob res alienum. Fremebant se foris pro libertate et imperio dimicantes, domi à civibus captos et oppressos esse: tutioremque in bello quam in pace, inter hostes quam inter cives, libertatem plebis esse. Liv. L. 2. c. 23.*—*Latini Equites cum tumultuoso advolant nuncio: Volscos, infesto exercitu ad urbem oppugnandam venire. Quæ audita (adeo duas ex una civitate discordia fecerat) longè aliter PATRES ac PLEBEM affecere. Exultare gaudio plebem; ultores superbiam PATRUM adesse dicere Deos. Alius alium confirmare, ne nomina darent: cum omnibus potius quam solos perituros. PATRES militarent, PATRES arma caperent, ut penes eosdem pericula belli, penes quos præmia, essent. C. 24.*

Vid. supr. p.  
41.

ders, and no otherways between *Patricians* and *Plebeians*, than as the Senators were the principal Creditors, and Multitudes of Commoners were the Debtors. And this might serve for a full answer to Dr. *Chapman's* Argument (in p. 96 of his Essay) whereby he would prove, that in the beginning of the Commonwealth, there were no *Plebeian Senators*: "if there had been any such, (says the Dr.) it is scarce possible to suppose, that we should not have heard of them; as they could not have been so entirely deaf to the *Complaints* of their *Fellow-Plebeians*, as not to have endeavoured to rescue them from the unreasonable Oppressions under which they laboured." To this, I say, it might be a sufficient Answer, That the *Complaints*, spoken of, were not *Complaints* of *Plebeians* against *Patricians*, but of Debtors against Creditors. The Senatorian Creditors were, many of them, by birth *Plebeians*; but these had one and the same Motive with those who were by birth *Patricians*, to distress the poor Commoners. It is surely a marvellous Notion, which the Dr. seems to have entertained, that the *Plebeian* Knights, if they had not passed through the Ceremony of being made *Patricians*, before they were admitted into the Senate, would have felt Compassion for the *Plebeian* Debtors, and would have endeavoured to rescue them from Oppression; but that the Ceremony of making them *Patricians* had so hardened their Hearts as to render them insensible to the Sufferings of *Plebeians*. And this is the more extraordinary, because the Doctor observes, that *Menenius Agrippa*, a *Plebeian* by birth, and who, (he thinks) was made a *Patrician*, on Occasion of the famous *Lection*, did endeavour, and with Success too, to rescue the *Plebeians* from Oppression; as did likewise other Senators, by birth *Patrician*.

But though the first civil Dissension, at *Rome*, had its Source in the Difference of Fortunes, not in the Distinction of Families; yet that Difference of Fortunes seems to have given Birth to the two FACTIONS of *Patricians* and *Plebeians*; the Riches of the former prompting them to affect unrighteous Domination.

Hitherto the way into the Senate had been open to *Plebeians*, that is, to Men not descended from *Senators*; and *BRUTUS's* New Senate was in \* part, at least, composed of such. But these, who,

\* In the new Senate, formed by *Brutus*, it is not to be doubted but some of the



by their Promotion to the *Senatorian* Dignity, *patricianized* their Families (as is evident from the *SPEECH* of *Canuleius*, in *Livy*) combined with those who remained of the old Patricians, to confine *Patricianship*, for the future, to their own Descendants and Relations, by excluding all other Families from the *Senatorian Dignity*, from which alone *Patricianship* (the same then with *Nobility*) could be derived. Not content with this, nor with the Magistracies and Wealth of the State, they would likewise have Possession of all the Lands. The Cruelties they exercised towards their Debtors, in the Pursuit of this last Object, produced the SECESSION; the *Secession* the *TRIBUNESHIP*; and the *Tribunes* formed a *PLEBEIAN FACTION*, at the Head of which they combated the *Patricians* (now likewise become a *Faction*) till the way to all the public Honours was once again laid open to the *PLEBEIANS*.

Dr. Chapman is of Opinion, that the Words of *Canuleius* to Liv. L. 4. c. 4. which I refer, viz. *Nobilitatem istam vestram—per cooptationem in PATRES habetis, aut ab Regibus lecti, aut, post exactos REGES, jussu POPULI* \* cannot be understood to mean, that any of the Essay, p. 39. "Patricians became such, by their Ancestors being chose Senators.

the Members were of the ancient *Patrician* Families: We find a *SERVILIUS* (Colleague of *Appius Claudius*) in the Consulship, the very Year of this first Rupture between the *Senate* and the *Commons*; and we have observed, that the *SERVILII* were one of the *Alban* Families admitted into the Senate by King *Tullus Hostilius*: And, in the Speech of *Canuleius* the Tribune, some of the *Patricians* 48. to whom he speaks, are by him confessed to be descended from Men created Senators by the *KINGS*, *ab Regibus lecti*: And as these Words prove the Existence of some of the old *Patrician* Families in the Time of *Canuleius* [Y. of Rome 308.]; so his following Words, *Post exactos Reges jussu populi*, shew that some of the Knights, chosen into the Senate by *Brutus*, were *Plebeians*; otherwise, *ab Regibus lecti* would have taken in ALL the *Patricians*.

\* The same thing is implied in the Words of *Tacitus* (L. xi. c. 25.) where he is giving a Reason why the Emperor *Claudius* made *Patricians*.—"There being few left of the Families descended from the *PATRES Majorum Gentium* of *ROMULUS*, or of those descended from the *PATRES Minorum Gentium* of *BRUTUS*: *Paucis jam reliquis familiarum quas Romulus Majorum et L. Brutus Minorum Gentium appellaverunt.*"

N. B. As *Tacitus* here calls the Senators of *Brutus* by that Appellation, which *Livy* gives to the Senators of the Creation of *Tarquin* the elder, we may suppose, that it was common to both Creations: But *Romulus* cannot be supposed to have called his Senators *Patres Majorum Gentium*; nor could that Appellation be thought of, before there was a new Creation of Senators to occasion the Distinction.

"BECAUSE (adds the Dr.) nothing is more notoriously false, than that any Person, meerly by being chose into the Senate, ceased to be a Plebeian:" That is to say, *In certain Times of the REPUBLIC* a Plebeian, chosen into the Senate, continued, notwithstanding that Promotion, to be a Plebeian; *Therefore* it is notoriously false, that *in the Times of the KINGS*, and *in the Time of the CONSUL BRUTUS*, any Person ceased to be a Plebeian meerly by being chose into the Senate.

Let us try how this Method of reasoning will do in another instance:

See Essay, p. 98, 99.

In the Times of the Republic, after the Affair of *Coriolanus*, it was not necessary, that a *Plebeian* should be made a *Patrician*, in order to his having a Seat in the Senate; *therefore* it is notoriously false, that in the Times of the Kings, and of the Consul *Brutus*, such previous Qualification was necessary.

The Dr. will hardly allow this Argument to be demonstrative.

But whatever was *Canuleius's* meaning, the Dr. is of Opinion, that "not much stress ought to be laid" on his Words; "FOR (says the Dr.) whether the Historian did not think it necessary, that a *factious* Tribune should be very cautious in what he affirmed, or whatever else was the Reason, *certain* it is, that this SPEECH is penned with much less regard to Truth, than *Acrimony*."

The Tribune's Speech is doubtless spirited, and full of Sarcasm: But, that he shews a *disregard to Truth*, or that, for his Attempt to open to the Plebeians, by a new Law, the way to the Consulship; and to get that Law repealed, which forbade Intermariages of Patricians with Plebeians, he deserves to be stiled *factious*, will not be readily granted. As to the *Facts*, which he asserts, they are agreeable to *Livy's* History of the Times referred to; and to say, that they are not true, because they do not agree with *Dionysius's* Division of *Romulus's* Followers into *illustrious Nobles*, and *honest Yeomen*, *sufferers for the Cause of Liberty*, is surely doing too much honour to the Greek Rhetorician.

To prove that *Canuleius* has not a due regard to Truth, the Dr. makes the following Note on the Word *Speech*, in the Passage above-cited from his *Essay*.

"Thus, *Canuleius* affirms; that the Law he proposed, for  
" chusing



“ chusing one of the two Consuls from among the Plebeians, was  
 “ nothing new; that the People had always had a right to confer  
 “ Honours upon whom they pleased; and that, as a Proof of it,  
 “ their Ancestors elected *Numa* King of *Rome*, though he was so  
 “ far from being a Patrician, that he was not even a Citizen \* :  
 “ Whereas, nothing can be more certain, than that by a funda-  
 “ mental Law of the *Roman* Government, none but Patricians could  
 “ be chose into public Offices; that this Law was never violated,  
 “ till many Years after the Expulsion of the Kings; and that *Numa*,  
 “ by *LIVY's* own Account, must have been a Citizen, and by those  
 “ of *Plutarch* and *Dionysius*, a Patrician also.”

What the learned Writer means by *LIVY's* own Account, I cannot guess. This Historian informs us that *NUMA* was a *Sabine*, and that he dwelt at *Cures*, a City of the *Sabines*; and from thence was brought to *Rome*, and created King †. *PLUTARCH* says expressly that *Numa* was not one of those *Sabines* who settled at *Rome*, that he did not follow the fortunes of his Father-in-Law, *Tatius*, but remained in the country of the *Sabines*. And tho' *DIONYSIUS* (in his history of *Servius Tullius*) says, that *NUMA* was, by suffrage, raised from the Plebeian order to the Patrician ‡, it is in contradiction to his own history of *Numa*, who, he there tells us, was chosen to be King of *Rome* for this reason, among others, that he was not a citizen of *Rome*, but a stranger §; and therefore unbiassed to either of the domestick factions.

And when the Dr. says, “ nothing can be more certain, than  
 “ that by a fundamental Law of the *Roman* Government, none  
 “ but Patricians could be chose into public Offices;” surely he must be mistaken as to the Certainty, at least, of this Proposition;

\* En unquam creditis fando auditum esse, Numam Pompilium, non modo non Patricium, sed ne civem quidem Romanum, ex Sabino agro accitum, populi jussu, Patribus auctoribus, Romæ regnasse?

† Inclyta justitia religioque eâ tempestate Numæ Pompilii erat. Curibus Sabinis habitabat. — Audito nomine Numæ, Patres Romani, quanquam inclinari opes ad Sabinos, rege inde sumpto, videbantur, tamen, &c. — Accitus—de se deos consuli jussit. — Declaratus rex Numa de templo descendit. Liv. L. i. c. 18.

‡ Δια ταυτα Ρωμαιοι μεν αυτον εν τῃ δῆμῳ μεγαλειν ηξωσαν εις τῃς πατριμικῃς ἡφους επενεγκαντες, ωσπερ Ταρκυνιον τε προτερον, και επι προ τῃς Νομαν Πομπιλιον, p. 208.

§ —επακλον εξωθεν ανδρα, και μηδ' οποιεροις προσθησομενεν, ως αν μαλιστα εξαριθειν τασιαζον, εξευροντες αποδειξει βασιλεα. p. 120.

seeing

seeing it is so flatly contradicted by LIVY, in this SPEECH of *Canuleius*. The very purpose of the SPEECH is to shew, that the PATRICIANS (*i. e.* the Descendants of the Roman Senators) had no exclusive Right to Magistracies, by any fundamental Law of the Government: That the PEOPLE had a Right to bestow Honours on whom they pleased: And he cites three Cases, where they had exercised that Right, namely in the Elections of three of their Kings, *Numa*, *Tarquinius Priscus*, and *Servius Tullius*, not one of whom was a Roman Patrician, that is, a Descendant from a Roman Senator.

Nor does the Tribune affirm, "that the LAW, he proposed, for choosing one of the two Consuls from among the PLEBEIANS, was nothing new:" For this was not the Law in Question: The Law, now proposed, was to empower the PEOPLE to "choose both the Consuls, either out of the Senators or out of the Plebeians, as they should think proper †:" And this Law was proposed by Nine of the Tribunes. And what *Canuleius* affirms to be *nothing new* \* is the claim, made by the Tribunes, in behalf of the PEOPLE, of a Right to confer honours upon whom they pleased.

As this SPEECH of *Canuleius* is frequently referred to by those who have discussed the main Question before us, I shall take leave to dwell a little longer upon it, and upon what the Dr. says concerning it.

The Dr. takes notice, that "the learned *Manutius* delivers it as his Opinion; that though the PEOPLE chose the Persons, who composed the SENATE at its first Institution, the Case was different afterwards; and that till the Establishment of the Commonwealth at least, all the Senators, as well those, who succeeded into vacant Seats, as those, who were added to the former Number, owed their Dignity to the sole Will and Plea-

†—Mentio primò sensim illata à tribunis, ut alterum ex plebe consulem liceret fieri,—Eò processit deinde, ut Rogationem novem tribuni promulgarent, ut populo potestas esset, seu de Plebe, seu de Patribus vellet, Consules faciendi. Liv. L. 4. c. 1.

Nunc rogari, ut seu ex Patribus, seu ex Plebe vellet, populus consules creet. c. 2.

\* Nihil novi ferimus, sed id quod Populi est, repetimus atque usurpamus; ut quibus velit, Populus Romanus honores mandet. — Si populo Romano liberum suffragium datur, ut quibus velit, consulatum mandet, et non præciditur spes Plebeio quoque, si dignus summo honore erit, apiscendi summi honoris, stare urbs hæc non poterit? c. 3.



"sure of the KING, and not to the Suffrages of the PEOPLE." \*  
And the Dr. further observes, that "*Manutius* founds his Opinion upon a Passage in the memorable INVECTIVE of the  
"Tribune *Canuleius*—compared with what *Festus* has said on the  
"same Subject." The Dr. adds; "but *unfortunately*, the Words  
"referred to in this SPEECH, cannot be understood to mean, that  
"any of the Patricians became such, by their Ancestors being  
"chose Senators, BECAUSE," &c. Essay, p. 39.

And the Dr. thinks, that, could the Words be understood to mean, &c. Yet "not much stress ought to be laid on this Passage; FOR,—certain it is, (says the Dr.) that this SPEECH is  
"penned, with a much less regard to Truth, than Acrimony."

Now, to my Apprehension, the Dr. is *unfortunate* both in his BECAUSE and in his FOR. The BECAUSE I have spoken to already. The FOR, i. e. the *Reason*, assigned by the Dr, for "not  
"laying much Stress on the Passage" in *Canuleius's* SPEECH, whereon *Manutius* founds his opinion, seems to be no less unhappily employed. "FOR (says the Dr.) *certain* it is, that  
"this Speech is penn'd [by *Livy*] with a much less regard to  
"Truth than Acrimony." Now, supposing (without granting) this to be *certain* as to many parts of the Speech, yet, as to that Passage, whereon *Manutius* builds, viz. *You owe your Patricianship to your Ancestors being CHOSEN into the SENATE, either BY THE KINGS, or, after the Expulsion of the Kings; by the Command of the People*†; I say, it cannot be imagined, that any thing but a strict regard to Truth could make the angry Tribune say CHOSEN BY THE KINGS [ab *Regibus lecti*] or make *Livy* put those Words into the Mouth of a Tribune who was warmly

See above, p. 60.

[ \* *Reges igitur primum Senatores creantur, sed Romulus (quod ex Dionysio liquet) curiatis Comitibus, reliqui Reges nullis opinor Comitibus, ipsorum arbitratu. — Reliquos Senatores qui deinde ante liberam Civitatem, aut in demortuorum locum suffecti, aut augendi Senatus Causa creati sunt, non Populi Suffragiis, sed voluntate, judicioque Regis in amplissimum ordinem pervenisse existimamus. Manut. de Sen. Rom. c. 1. — ]*

N. B. This Passage shews, that M. Vertot, by rashly trusting to his Memory, has made *Manutius* say of the *Kings*, what he says of only the *Consuls* and *Censors*. Vid. *supr.* p. 16. the note.

† Nobilitatem istam vestram—per cooptationem in Patres habetis, aut AB REGIBUS LECTI, aut post exactos Reges jussu Populi. *Liv.* l. 4. c. 4.

af

asserting the *Rights* of the PEOPLE. Had the Tribune been disposed to deviate from the Truth of History, he would probably have done it in Aid of his Cause, and not to hurt it: He would not have derogated from the legal Power and Prerogatives of the PEOPLE, by attributing to the KINGS a Prerogative which they had not: He would rather have said, that in the time of the Kings, as well as after their Expulsion, ALL the Senators were *elected* by the PEOPLE, or *created by the Command of the PEOPLE*, [jussu Populi.] So that the *Acrimony* with which the Tribune is supposed, by the Dr., to speak, rather strengthens, than weakens the Foundation of Manutius's Opinion.

But I shall pursue no farther, at present, the Consideration of CANULEIUS's Speech, and of the Credit due to what is by him asserted. It will be necessary hereafter to consider these fully, when we come to the Hypothesis of the two Doctors.

Vid. supr.  
p. 42.

To give now a direct, though conjectural, answer to the Question above stated, viz. — *WHEN was it first settled, that a PLEBEIAN, though admitted to be a Member of the SENATE, should still be counted a PLEBEIAN?* — I presume that this was about the time of the Tribuneship of CANULEIUS, (Y. of R. \* 308.) when the Law against Intermarriages of Patricians and Plebeians was repealed, and an *Agreement* made between the SENATE and the COMMONS, that, instead of CONSULS, *Military Tribunes with Consular Power* should be chosen to govern the State, and that the PEOPLE should be free to chuse these new Magistrates either out of the *Patricians*, or out of the *Plebeians*.

\* Fast. Cap.

By this *Agreement* the Admission of *Plebeians* into the *Senate* became unavoidable, if the People should happen to chuse to the Military Tribuneship Plebeian Candidates: For these, when chosen, must, in right of their Office, preside in the *Senate*.

In order to place this Matter in the best Light I can, I shall, with the Reader's Leave, recal some Particulars already mentioned.

1. During the Regal State, and in the first Lession of Senators at the Commencement of the Republic, the Persons, admitted into the Senate, became *Noble* (if not so before) by that Admission; and their Children and Descendants were stiled PATRICIAN, from the Title of PATRES given to those Senators.

This,



This, from several Passages in Livy and Tacitus, seems to be clear beyond a reasonable doubt, notwithstanding Dionysius's Dream of *Patrician-making*, before there were any Senators.

2. In the times of the KINGS, and during the 14 first Years of the CONSULAR STATE, there were no such FACTIONS as the SENATE and COMMONS, the PATRICIANS and PLEBEIANS. These *Factions* took their Rise after the death of Tarquin the Proud; as appears evidently from *Livy's* History of this time; and from some Passages of *Sallust*, speaking of the Roman *Commonwealth* \*. Y. of R. 258.  
Appius Clau-  
dius Consul.

3. It does not appear by sufficient Testimony, that the *Plebeians* were, at any time, by any *Law*, excluded the Senate; though, in *Fact*, from the time of Brutus's Lession of Senators in the Year of Rome 244, till the *Tribuneship* of CANULEIUS, Y. of R. 308, it would seem, that no persons, who were not of Patrician Families, [*i. e.* not descended from Senators created by the *Kings*, nor from the Senators created by *Brutus*] were admitted into the Senate as Members †:

The Reason seems to have been as follows;

THE *new Senate*, the 300 Senators of Brutus's Lession, finding themselves in possession of the Magistracies, and of all real Power in the State, and, after some time, being intoxicated with

\* In duas partes ego civitatem divisam arbitror, sicut a majoribus accepi, in *Patres*, et *Plebem*. Antea in PATRIBUS *summa Auctoritas* erat, *Vis* multo maxima in PLEBE. Itaque sæpius in Civitate SECESSIO fuit: semperque Nobilitatis Opes diminutæ sunt, et jus Populi amplificatum. Orat. 2. ad C. Cæsarem de Republ. ordinanda.

—Injuriz validiorum, et ob eas discessio plebis a Patribus, alique Diffensiones domi fuere jam inde a Principio: neque amplius, quam regibus exactis, dum metus a Tarquinio, et bellum grave cum Etruria positum est, æquo et modesto jure agitatum; dein servili imperio Patres Plebem exercere; de vita atque tergo REGIO MORRE consulere; agro pelleri, et, ceteris expertibus, soli in imperio agere. Quibus sævitiis, et maxime sceneris onere oppressa plebes, cum assiduis bellis tributum simul & militiam toleraret, armata Montem sacrum atque Aventinum insedit. Tumque Tribunos Plebis et alia sibi jura paravit. Fragmenta. L. 1. p. 401. Varior.

† It will I think appear, that there is no Foundation for what M. Vertot says [Rep. p. 460.] viz. *That the Plebeians taking Advantage of the Banishment of Coriolanus introduced themselves into the Senate, &c.*

Nor for the Opinion, held by the two Doctors, *That the Tribunes gained an actual Admission into the Senate within two Years after their first Creation.* See Dr. Middleton's Treatise, p. 44, and Dr. Chapman's Essay, p. 47.

the Sweets of Empire, entertained the Ambition of deriving to their Heirs and Descendants an exclusive Title to these Advantages. Only it is probable, that, if there were any of the old Patrician Families existing, more than those, the heads of which were actually in the Senate; it is probable, I say, that the Senators took such Patrician Families into the Scheme.

They pursued this Scheme, not by attempting to suppress all assemblies of the PEOPLE, or to deprive them of the Privileges of Legislation, and Electing the Magistrates; but by making themselves masters in those Assemblies: And in this Enterprize they succeeded so well, that the oppressed Commoners, for many Years, could never obtain any Redress of Grievances but by Mutiny and *Secessions*: Nay, when the People were left free to chuse *Military Tribunes* out of the Plebeian Body, the Influence of the Patricians was such, that in 44 Years no Commoner attained to that Magistracy. Even the *Tribunes of the Commons*, who had prevailed to have the People left free in their Choice, could not gain a Majority of Voices for their own Promotion to the other Tribuneship. And by what means did the senatorian Families acquire this Influence? By engrossing to themselves all the Wealth of the State, and by getting Possession of almost all the Lands, by means of that Wealth. Fourteen Years of uncontrolled \* Sway had given them an Opportunity of doing these effectually; and Experience evinces, that Power never fails to accompany Property. *Supposing the Scheme, abovementioned, to have been really formed,* it seems of very little Consequence, as to the execution of it, whether the Persons, occasionally appointed to fill the Vacancies of the Senate, were named by the CONSULS or by the PEOPLE. If this Prerogative belonged to the Consuls, it is not to be thought strange that we hear nothing of Plebeian Senators, after the memorable Lesson of Brutus. Nor if, after that time, the Senators were chosen by the PEOPLE, have we any cause to wonder that no mention is made of *Plebeians*, brought into the Senate. For if, in the Election of MAGISTRATES, the PEOPLE, without the Obligation of LAW, could by any Influence be engaged to

\* Dionysius (p. 398.) makes BRUTUS, the *Seceder*, say to the Deputies from the Senate—*ὀνέπτασάντες αὐτοῖς [βασιλεῦσι] μεθ' ὑμῶν—τῆς μὲν ἐξηλασάμεν, ὑμῶν δὲ φερόν-τες ἀνεθίκαμεν τὴν ἐκείνων ἀρχήν.*



confine their Choice to the Patricians, (so long, till these could plead a Sort of Right by Prescription to all the Magistracies,) we may well suppose that the same Influence would prevail in the Election of SENATORS.

And (by the way) this will account for that Novelty, that extraordinary Appearance, in the SENATE, of so many inconsiderate headstrong YOUNG Men, as, by Dionysius's account (if he may be credited) were Members of it in the Consulship of Cassius and Cominius, Y. of R. 260. The Historian tells us, that the Consuls, to check the Petulance of these Youths, threatened them with a LAW \*, which should fix the Age requisite for a Senator. This Menace was but 16 Years after the Election of the 300 Senators by Brutus; and doubtless many of the Vacancies which had happened in that Assembly, had been filled up with Sons and Nephews of those Senators †.

As, after the Institution of the *Military Tribuneship*, the Admission of COMMONERS into the SENATE became unavoidable, in case any such should be chosen to that high Office; and as it was universally expected, that such would be chosen, it

\* Dr. Chapman observes, " that though the Consuls thought fit to threaten the young Members with it at this time, it does not appear that they ever thought of it afterwards." *Essay*, p. 104.

† The same learned Writer, speaking of the Romans departing from their Custom of chusing only elderly Men into the Senate, writes thus:

" This gradual Introduction of young Members appears to me to have arose from the QUÆSTORS obtaining Admission into the Senate. As these Magistrates had the Care of the public Treasure, which had before been under the Direction of the Consuls, and were originally the second Magistrates in the Commonwealth, the People by delegating to them so great a Trust were presumed to judge them worthy of one that was less important, I mean that of having a Share in the great Council of the State. Thus the QUÆSTORS became possessed of Seats in the Senate, during the continuance of their office, and of a right to be chose in form, at the Election next after the Expiration of it; and therefore as the Quæstorship might legally be obtained at the Age of 27, Persons, who were sufficiently qualified in other respects, might well be presumed capable of being made Senators about the same Years." Now I imagine, that the chusing of young men for Quæstors, and the Admission of young Men into the Senate, began about the same time, and from one and the same Cause, namely, the Resolution which the Patricians had taken to engross the Magistracies and the senatorian Dignity to their own Body, which could not, in the first Years of the Commonwealth, furnish a sufficient number of elderly Men to fill the Vacancies that happened in the Magistracy and in the Senate.

*Observations on M. VERTOT's Answer*

seems highly probable, that the Nobles did, at this time, open the Door of the Senate-house to some few Commoners, the richest, and the most likely to be raised to the Government. Is it not reasonable to believe, that the PATRICIANS, when they found they must admit PLEBEIANS to be supreme Governors, would chuse to have those Governors taken out of the Senate, rather than immediately from the PLEBS? P. LICINIUS CALVUS, the first plebeian military Tribune, was probably now created a Senator, though not placed in the *Military Tribuneship* before the Year 353: for Livy tells us, that he was then an old Senator, and a very old Man, *vetus Senator et ætate jam gravis*. "History Treat. p. 50. (says Dr. Middleton) has not informed us what particular merit it was, that advanced him to it," [Licinius to the Dignity of Military Tribune.] Doubtless his merit with the Patricians was his being an old Senator.

But though the Patricians, when they could no longer keep the whole Body of the Plebeians excluded from the Senate-house, consented to the Admission of some of the most considerable of that order, they at the same time took care, that such Plebeians (whether Senators by election, or in Virtue of their Office of Military Tribune) should not have ALL the Honours and Privileges, which the Descendants of every Plebeian, created a Senator by BRUTUS, at his memorable Lesson, became possessed of. The senatorian Families, ever since that Lesson, had assumed to themselves an exclusive Right, not only to the Consulship and Quæstorship, but to the Priesthood, and the \* Auspicia; Privileges of the utmost Importance for maintaining their Authority: and, when they condescended to let Plebeians be placed in a supreme Magistracy of a new Invention, they granted nothing farther than this, and its unavoidable Consequence, the senatorian Dignity. Nay, though the new Magistrates were called *military Tribunes* with CONSULAR Power, we find that the Patricians artfully contrived, presently † after

\* —Interroganti tribuno, cur Plebeium Consulem fieri non oporteret, ut fortasse verè, sic parum utiliter in præsens certamen, respondit, *Quod nemo Plebeius auspicia haberet*: Liv. L. 4. c. 6. Y. of R. 308.

† The Agreement to create Military Tribunes was in 308. [Fast. Cap.] The first Magistrates of this Sort were at the Head of the State in 309. Though the PEOPLE,



after the Institution of that Magistracy, to prevent any Plebeian from possessing a certain Branch of the CONSULAR Office, that was of very considerable Importance; I mean, the care of the *Census*, or Valuation of men's estates. To manage this affair two new Magistrates were constituted, with the Title of CENSORS.

LIVY reports, that the Office of CENSOR owed its Rise to a Neglect, during many † Years, of taking the Census, which could no longer be deferred. That the present Consuls wanted Leisure for the Business, by reason of the many impending Wars, to which they must necessarily attend: and that it was hinted by [the Consuls in] the Senate, that the CENSUS was, in truth, a laborious Business, below the consular Dignity, and required a peculiar Magistrate to perform it. And though (says Livy) the thing proposed was [or rather *seemed* to the Multitude] of little Moment, the *Fathers* gladly agreed to the Motion, as it would increase the number of PATRICIAN MAGISTRATES. The Historian adds, "It is my Opinion, that the *Fathers* did" then foresee, what afterwards happened, that the personal Weight and Dignity of those who would execute the Office, would in time procure great Prerogatives and Dignity to the Office itself\*."

If such was the *Forefight* † of the *Fathers*, no wonder that they

PEOPLE, free to chuse Plebeians, had chosen only three Patricians, it was thought proper, after three Months, that these should abdicate, on account of some Defect, said by the Augurs to have been in the Ceremony of the Elections. An Interrex being appointed, he held the Comitia for chusing Consuls; and the Consuls chosen, having governed to the end of the Year 309, were succeeded by other Consuls; in whose Year (310) and, seemingly, in the beginning of it, the *Censorship* was instituted.

† The last Census, which was the *tenth*, had been in the Year 294, so that the Affair had been neglected 17 Years. The Space of time between the 7th and the 8th Census was 19 Years, and the Consuls had Business enough upon their Hands, yet there was no thought *then* of creating CENSORS.

\* Id quod evenit futurum, credo etiam, rati, ut mox opes eorum qui præsentes, ipsi honori jus majestatemque adjicerent. L. 4. c. 8.

† Dr. Chapman is of Opinion, that the FATHERS needed no *forefight*, on this occasion; for that the CENSORS, at their first Institution, were vested with all the Powers they ever had in after times. "The Census which was begun by *Servius Tullius* had till then been managed by the CONSULS; and the *only* reason for putting it into other hands at that time, was, because the continual wars, in which the Republic was engaged, would no longer suffer them to go through a Work of that kind. Their power therefore, to make an Enumeration

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they took this early Precaution to hinder the *Censorian Powers* from falling into *Plebeian Hands*, which must unavoidably have happened, if, before the Creation of CENSORS, Plebeians had been chosen to the *Military Tribuneship*.

“ration of the Persons, and an Estimate of the Fortunes of their fellow Citizens, they derived from the Consuls, whom they succeeded; and I am inclined to think, that all the share they had in the Choice of Senators, was conveyed to them in the very same Channel. For, as it was usual to make a public Lecture or Recital of the Senate, and to admit new Members, or displace old ones, at the end of every Census; it was considered, as making a part of the Census itself, and transferred with it, for that very reason.

“All the Power therefore which the Consuls enjoyed formerly, with regard to the Admissions into, or Expulsions from the Senate, from henceforth became vested in the Censors, but that they obtained any other, or greater Power, I can by no means admit. For though Livy says, that the Censorship, which was inconsiderable in its Origin, was afterwards so far augmented, as to have the Direction of the Morals and Discipline of the Romans, the Superintendence of the Senate, and the Centuries of Knights, and the Distribution of Honour and Ignominy: Yet as the Office is expressly said to have been instituted for no other Reason, but that of easing the Consuls of a Business they had not Leisure to attend to; as the several Branches of their Power, which are here enumerated, are all Parts of, or strictly connected with, the Affair of the Census, for which they were professedly created; and as it appears from the same Author, that neither the Patricians, who were desirous of establishing this new Office, nor the Tribunes who consented to it, thought of vesting it with any new Powers; instead of interpreting those words, of any additional Authority being annexed to the CENSORSHIP after its first Institution, we should rather suppose them to imply, that as the Business of the Census was the declared end, for which it was created, it appeared at first to the Generality of People, to be rather a laborious than honourable Employment; as they were not aware of its drawing after it so considerable a Branch of Power, as that of inspecting the manners, both of the Senate, and every private Citizen.” Essay, p. 47, & seq.

Whether the Dr. by these reasonings, and some others that follow, has well supported his *Opinion*, concerning the Powers of the Censors at their first Institution, I shall not at present examine: Only I must observe, that, the Dr. having that *Opinion*, it seems wonderful, he should believe the CENSORSHIP to have been instituted merely to ease the Consuls, and should not be aware of GUILE in the venerable Fathers, when they chose this time for separating from the CONSULAR Office those Powers he has enumerated, and transferring them to two Patricians, whose Magistracy was to be quinquennial, as the Dr. himself observes p. 54. Supposing the Censors to have had no other share in the Creation of Senators, but that of presiding in the Assemblies where they were chosen, what the Dr. says (in p. 29 of his Essay) concerning the great power of a presiding Magistrate at popular Elections, is sufficient to shew of what Importance it was to the Fathers and the rest of the Patricians, to constitute PATRICIAN Censors, after they had consented to the creation of Military Tribunes in Favour of the PLEBEIANS.

PERHAPS



PERHAPS Livy's Conjecture will appear the more probable, if we consider, that the Senate, at this time, took no care to hinder the Function of dispensing Justice in the City, which was one considerable Branch of the CONSULAR Office, from being transferred to Plebeians, (in case any such were chosen to the Military Tribuneship;) and yet were so attentive to keep the Business of the CENSUS out of their Hands.

[Afterwards indeed, when, in the Year 386, the Plebeians obtained Access to the Consulship, the Patricians struggled hard, almost to a civil War, and prevailed to have the judiciary Power of the Consuls transferred to a particular Magistrate, expressly created for that purpose, who was to be stiled PRÆTOR, be next in Dignity to the Consuls, and be always chosen out of the Patrician Body.]

FROM the Consideration of these several particulars, I should readily have concluded, if learned Men had not said there was Obscurity and Difficulty in the Matter, That, after an arbitrary\* Exclusion of all PLEBEIANS from the SENATE, during about 64 Years, the way into that Assembly was opened to them about the Year 308, when the LAW (which had been made by the Decemvirs in 303) against Intermarriages of Patricians with Plebeians, was repealed; and when the FATHERS consented, that MILITARY TRIBUNES with CONSULAR Power should be substituted in the place of CONSULS, and that the PEOPLE should be free to chuse PLEBEIANS into that new-invented Magistracy.

\* With regard to the Qualifications requisite for a Roman Senator, there are two particulars with which both Dr. Middleton and Dr. Chapman seem to be embarrassed, namely the AGE and the ESTATE.

“ That there was a certain age required for a senator, is often intimated (says Treatise p. 92. Dr. Middleton) by the old writers, though none of them have expressly signified what it was. The legal age for entering into the Military Service, was settled by SERVIVS TULLIVS at seventeen Years\*: and they were obliged, as Polybius tells us, to serve ten Years in the wars, before they could pretend to any civil magistracy †. This fixes the proper age of suing for the Quæstorship, or the first step of honour, to the twenty eighth year: and as this Office gave an Admission into the Senate, so the generality of the learned seem to have given the same date to the Senatorian Age.

“ But for my part, as far as I am able to judge, from the Practice of the Republic in its later times” [which practice is certainly no good foundation whereon to form

\* A. Gell. x. 28.

† Polyb. de Institut. rei. milit. l. 6. p. 466.

- a *Judgment*] "I take the Quæstorian Age, which was the same with the Senatorian, to have been *thirty Years* complete.—Cicero says, (Phil. 5. 17.) that the Laws concerning the Age of Magistrates were not very ancient:—and Livy tells us, that L. Villius, a Tribune of the People, was the first, who introduced them, A. U. 573, and acquired by it the Surname of Annalis: But long before this, we find an Intimation of some Laws or Customs of that Kind subsisting in Rome: and in the very Infancy of the Republic, when the Tribunes were first created, the Consuls declared in the Senate, that they would shortly correct the Petulance of the young Nobles, by a Law which they had prepared, to settle the Age of the Senators.
- Treat. p. 96. "On the same subject, Dr. Chapman writes thus, in his Essay. "The Age requisite for a Roman Senator, deserves our Consideration—. What it precisely was in the later Ages of the Republic is not quite certain; and we are still more at a Loss to fix it, when the Senate was first instituted. The Direction given to the People, upon that, and probably every subsequent occasion, was to chuse persons, who were arrived at the most prudent age; and this was certainly pretty late in life &c." (See above p. 43.) In p. 67 I have suggested by what probable Causes, an Assembly, which had the Name of SENATE from its being an Assembly of OLD Men, might come to abound with young pert Members, in a very few Years after the Commencement of the Republic. And I imagine, that, by having recourse to the same Causes, we may remove the second Difficulty, which regards the Estate of a Senator.
- Lib. 40. c. 44. "After speaking of the AGE, Dr. Middleton proceeds thus: "There was another Qualification also required, as necessary to a Senator; AN ESTATE, proper to support his Rank; the Proportion of which was settled by the LAW: But I do not any where find, when this was first instituted, nor even what it was, in any Author before SÆTONIUS; from whom we may collect, that it was settled at eight hundred Sestertia, before the reign of AUGUSTUS: which are computed to amount to between six and seven thousand pounds of our money; and must not be taken, as it is by some, for an annual Income, but the whole Estate of a Senator, real and personal, as estimated by the Survey and Valuation of the Censors.
- Treat. p. 97. "A fourth Qualification, supposed (says Dr. Chapman) to be required in a Roman Senator, was, that he should be possessed of an Estate of considerable Value. But this was certainly not insisted on originally, whatever it might be afterwards; for we have had occasion to observe before, that at first the Properties of all Roman Citizens were equal. This equality did not however continue very long; the Patricians, who had the Power, gradually becoming masters also, of the greatest part of the Wealth of the State. To this Alteration of Property, the Census, introduced by Servius Tullius, must be ascribed; which wisely proportioned all onerous Services to the riches and power of each individual. Those, who from the greatness of their Circumstances, were placed in the first Class, and were not too far advanced in Years, were obliged to serve their Country on Horseback, and distinguished with the Title of Equites; and from the end of the REGAL GOVERNMENT at least, Vacancies in the Senate were so regularly supplied by them, that their Order was called [by Perseus, King of Macedonia] the SEMINARY of SENATORS. It is probable therefore, that from that time, [the End of the Regal Government] at least, the Generality of those, who were chose into the Senate, were Men of the best Fortunes in the Republic; but
- Essay, p. 100, 101. "I
- Essay, p. 110. "I
- Liv. 1. 42. c. 61. "I
- " still



" still, we cannot take upon us to affirm, that any, who were eminently qualified in other respects, would be rejected, merely for being deficient in this. " *For these were days of virtuous Poverty*; Valerius Poplicola and Menenius Agrippa, " to whom Rome was principally indebted, for her Delivery from Tyranny and " Sedition, leaving so little behind them, as to owe their very Funerals to the " gratitude of their Fellow Citizens."

From the Poverty of *Valerius* and *Menenius* nothing decisive can be inferred, as to the Point in Question. They were Characters of singular Disinterestedness in an Age, *not of virtuous Poverty*, but, *of the most monstrous Rapaciousness and Avarice*; as appears from the Words of Sallust, (cited above in p. 65) and indeed from the whole Series of the History of the Republic till the Licinian Laws took place Y. of R. 386. It is possible that those two eminent *Patriots*, on so extraordinary an Occasion as a Revolution from tyrannic Government to a State of Liberty, might have impoverished themselves, in their Zeal to carry on the great Design, either by lending their Wealth to poor Citizens, to make them steady, or by answering other Calls from the Necessity of the times.

The probable Answer to the Question concerning the *Estate* requisite for a Senator, in the beginning of the Republic, seems to be, that, in *Practice*, whatever the *Law* might have determined, there was nothing fixed, with relation to this Point; That My Lords, the Senators, who, by bringing YOUNG COXCOMBS into the SENATE, shewed, they had no Regard to the Purpose of its Institution, nor to any Thing but the aggrandizing and enriching their own Families, made no scruple, when those Interests could be served by it, to dispense with the Regulation of Servius Tullius, concerning the ESTATES of Senators. Their scheme of confining the Senatorian Dignity to the Patricians could not probably have been pursued so long as it was, if they would have admitted into the Senate no Person who had not such an Estate as was required by Law. This then I conjecture to be the reason, why the learned Gentlemen are at a Loss to fix the Estate requisite for a Senator. In the first Years of the Republic the Avarice and Ambition of the Patricians, who were all-powerful, would not suffer it; In aftertimes, *virtuous Poverty* was in honour, till eastern Conquests introduced Luxury, and with it a general neglect, if not a contempt, of every Virtue.

## Observations on a DISSERTATION, &amp;c.

Regal State.

THE anonymous Author of the short Piece, entitled, *A Dissertation upon the Constitution of the Roman Senate*, differs from M. Vertot, concerning the 100 Senators of Romulus, the 100 Sabines, added to that Assembly, after the Union of Romulus and Tatius, and the 100 Senators created in the Time of Tarquin the Elder. Founding himself on the Authority of Dionysius, he supposes, that (excepting the first Senator, the President, whom Romulus named) these 300 did all owe their Senatorian Dignity to the Votes of the PEOPLE, and not to the Choice of the KINGS.

Dissert. p. 101,  
102.

He agrees, however, with M. Vertot in giving to the KINGS the prerogative of *filling up the Vacancies*, which from time to time happened in that Assembly: So that, according to him, the PEOPLE *built* the Senate, but the KINGS *repaired* it.

Consular  
State.

As to the times of the REPUBLIC, the Author of the *Dissertation* differs from M. Vertot in the following particulars.

Vid. sup. p.  
16.

I. M. VERTOT holds, (as we have seen) that the *CURULE Magistrates* had a right to sit in the Senate, not only during their Magistracies, but after the Expiration of them, and that the CENSORS were *indispensibly obliged*, when they made up the Roll of the Members, to insert in it the Names of those Magistrates, each according to his Rank: But then he confines this Right to the *CURULE Magistrates*.

Dissert. p. 104,  
& seq.

THE Author of the *Dissertation* gives to ALL the Magistrates, *non-curule* as well as *curule*, the Dignity of Senator, during their Magistracies; but holds, that (unless they were Senators and in the Censors List before they were Magistrates) they, after the Expiration of their Magistracies, “ceased \* to be Senators, till  
“ the

\* The Author seems here to suppose, that, without violating any Rules, men, who were not yet Senators, might be made *Prætors* and even *Consuls* and *Censors*; and he holds, that those Magistrates ceased to have a Right of *voting* in the Senate, merely by their ceasing to be Magistrates. Nor does he say, or seem to think,



“ the next time the Senate was called over by the CENSORS;  
“ when, if their names were not omitted, they became Senators.”

And he supposes, that, during the Interval between the Expiration of their Magistracy and the next call of the Senate, those who had been *Curule Magistrates* (that is to say *Consuls*, *Prætors*, *Censors*, and *Curule Ædiles*) had the Privilege of *coming into* the Senate, and *delivering their Opinions*, but not of *Voting*†. The other Magistrates, namely the *Tribunes*, *Plebeian Ædiles*, and *Quæstors*, had not so much as the Right of *Coming into* the Senate, during that interval‡.

2. M. VERTOT holds, that, excepting the *CURULE MAGISTRATES*, who became Senators of course, the *CONSULS* and afterwards the *CENSORS* \* did, by their sole Authority, name ALL the new Members, that were appointed to fill the vacant places in the Senate.

think, that the *Censors* were obliged to insert, in the Roll of the Senators, the Names of any of those persons whose Magistracies were expired. “ The power  
“ of the *Censors* (says he) was so great, that Cicero thinks, it ought to be ab-  
“ rogated. *Ex iis autem qui Magistratum ceperunt, quo Senatus constituitur,*  
“ *populare est sane neminem in summum locum nisi per Populum venire sublatâ*  
“ *cooptatione Censoriâ.*” Cic. 3. B. of Laws.

† What the Author here says concerning the *curule Magistrates*, he gathers from “ the Terms of the Consular Edict, in which they are always summoned  
“ and always distinguished from the Senators. This Edict is often mentioned Dissert. p.106,  
“ by Livy, and constantly runs in this Form, *Uti Senatores, quibusque in Sena-* 107.  
“ *tu Sententiam dicere licet ad—convenient.* Here those, who had a right of  
“ delivering their opinions in the Senate, are distinguished from the Sena-  
“ tors : In the following Passage, Cicero, in his Speech for Cluentius, distin-  
“ guishes them from the Quæstors and the Tribunes of the People. Quive  
“ Quæstor, Tribunus Plebis, quive in Senatu Sententiam dixit.

‡ That the non-curule Magistrates had not a right of *coming into* the Senate, during the Interval mentioned, the Author proves from “ a Passage in Valerius  
“ Maximus, (B. 2. c. 2.) where he says, that Q. Fabius Maximus, as he was  
“ going into the Country, met upon the Road P. Crassus, who, he knew, had  
“ been Quæstor three years before, and discoursed with him of what had passed  
“ in the Senate; not knowing that he had not yet been called by the *Censors* to  
“ the Degree of a Senator, by which means only, those, who had been Magistrates,  
“ could become Senators.” *Memor eum triennio ante Quæstorem factum, ignarusque*  
*nondum à Censoribus in ordinem Senatorium allectum, quo uno modo his qui jam Ho-*  
*nores gesserant, aditus in Curiam dabatur.*

\* Manutius thinks, that the *Censors* had this Privilege, but that the *Consuls* had it not.

THE Author of the Dissertation is of opinion that the annual Magistrates, *Curule*, and *Non-curule*, were the *Seminary* of the *Senate*, that is to say, the CENSORS did usually (though not obliged to it) supply the Senate, with new Members, from those Magistrates, by inserting their names in the *Roll*.

Differt. p. 103. That yet there were *other Senators*, who had never passed through any Magistracy, and that these were chosen into the Senate by the PEOPLE; an Election, "probably made, " when the Vacancies were too many to be filled up by the " Magistrates of the Year."

p. 104. That, in reality, " the Senators of both kinds [that is to say, " those who had, and those who had not been Magistrates] were " chosen by the PEOPLE; with this difference, that one sort of " them were elected *immediately* into the Senate, and others in- " to those Magistracies, that gave them a right to a Seat there," [i. e. a *Right* to be Senators during the year of their Magistracy, and a *Capacity* of being afterwards put on the *Censor's List*†.]

That the Persons, whom the PEOPLE elected *immediately* into the Senate, " were chosen promiscuously out of the *Plebeians* as well as *Patricians*, even before the PEOPLE [the *Plebeians*] were, by Law, capable of being either *consular Tribunes* or *Consuls*.

The Author adds,

" When the PEOPLE [the *Plebeians*] obtained the privilege " of being chosen Senators in this manner [i. e. chosen into the " Senate *immediately*, by the PEOPLE] I cannot determine; but " shall observe, that it must have been between the Years of Rome " 263. and 314."

N. B. This last Particular has been considered in p. 35 of the foregoing Observations.

† I have added this Explanation, because the Author himself has just before told us, that the annual Magistrates CEASED to be Senators, after the Expiration of their Magistracies; and therefore, if they afterwards became Senators, they must be indebted for it to the *Censors*.



Observations on Dr. MIDDLETON's Treatise, and  
Dr. CHAPMAN's Essay on the ROMAN SENATE.

SOME account of Dr. MIDDLETON's *first* Letter to the late LORD HERVEY concerning the Roman Senate, has been already given. The Dr.'s *second* Letter to his Lordship consists of several letters, on the same Subject, the Dr. having connected them "into *one continued Letter*, in the very words of the Originals, as far as they could be recovered from the imperfect Notes which he had taken of them, or, at least, in an exact Conformity to that Sense, in which they were first written." This *one continued Letter* contains the following Passages:

"MY LORD,  
"When your Lordship required my thoughts *on the manner of filling up the Roman Senate*, I gave them in the Simplicity of my Heart, the best, that occurred to me, on a subject, for which I was not then particularly prepared.  
"IN my former Letter, I chose to BEGIN my account of the Senate, from the time \* when its POWER and GLORY were at their HEIGHT, and its History the most worthy of our notice; when it was free in its deliberations, and open in its access, to the Virtue of every Citizen. But since your Lordship has thought fit to recur to its very Origin, and to trace out its Progress through every Period of its Duration, I think myself obliged to pursue the same method, and explain my thoughts on its original Constitution, and legal manner of Supply from the very Foundation of Rome, to the Oppression of its Liberty.  
"But in order to place the Subject of our debate in its true light it will be necessary to state precisely the different opinions, which we severally entertain about it."

\* N. B. This is the 3d Epoch from which the Dr. chose to BEGIN his one and the same account of the Roman Senate. His Reason for having three Dates we shall inquire into hereafter. See p. 2, and p. 5, of his Treatise for the other two Epochs.

Treat. p. 17. Your Lordship's notion then is "That under the Kings of Rome, the choice and nomination of all the SENATORS depended wholly on the Will of the PRINCE, without any right in the PEOPLE, either DIRECT or INDIRECT: That the CONSULS, who succeeded to the kingly power, enjoyed the same prerogative, till the Creation of CENSORS, who ever after possessed the sole and absolute right of making and unmaking Senators."

My opinion on the contrary is, "that the KINGS, the CONSULS, and the CENSORS acted in this affair, but MINISTERIALLY and subordinately to the supreme will of the PEOPLE; in whom the proper and absolute power of creating Senators ALWAYS resided."

"I shall proceed therefore to examine what evidence of Facts or grounds of Probability can be found in favour of my hypothesis, through all the several Periods of the Roman History."

REGAL  
STATE.

p. 18.

"I must confess in the first place, that as far as our argument is concerned with the regal government of Rome your Lordship has the Latin Writers on your Side, who constantly speak of the Creation of Senators, as a Branch of the royal Prerogative. But in computing the proper force of this evidence we must remember that none of those writers treat the question professedly, but touch it only incidentally; and that it is natural to all upon the slight and occasional mention of an event, to ascribe it to the principal Agent, concerned in its Production; so as to impute the Acts of popular Assemblies to the Prince or ruling Magistrate, who convened and presided in them, and had the chief Influence perhaps in determining the Transactions themselves. Thus when Livy tells us, that the Praefect of the City CREATED the first Consuls; and that Brutus, one of those Consuls, CREATED P. Valerius his Collegue in that office, or that the Interrex on other Occasions CREATED the Consuls, or that the Pontifex Maximus was ordered by the Senate to CREATE the first Tribunes, he means nothing more, than that those Magistrates called the People together in order to make such Creations, in which they assisted and presided. And as this is the usual Stile of all Writers, so it is peculiarly of those, who write the History of their own Country, and for the Information of their own People; who have not

L. 1. c. 60.

L. 2. c. 2.

L. 9. c. 7.

L. 3. c. 54.



“ the patience, to treat minutely of Things, which they suppose to be known to their readers, as well as to themselves :  
 “ and hence it sometimes happens that the Origin of Customs and  
 “ Constitutions of the greatest Importance are left dark and  
 “ obscure, not only to Strangers, but even to the Natives of latter Ages.”

“ The case however is different with Dionysius of Halicarnassus ; who professes \* to write for the Instruction of Strangers ;  
 “ and to explaine the civil Government of Rome, and the Origin of its Laws with the Diligence of an Antiquary, as well as  
 “ the Fidelity of an Historian.” Treat. p. 20.

The Observation, here made by the Doctor, concerning those who write the History of their own Country, is doubtless very just ; and it cannot be denied, that LIVY, in those parts of his History which are referred to, applies the Verb *creare* to express what is done by a Magistrate, who only convenes an Assembly of Electors, gathers their votes, and declares their choice. And this might serve for an answer to M. VERTOT's argument from Livy's words, *centum CREAT senatores*, if Livy had ever before used the word *CREAT* in that Sense, or had said any thing from which one might infer, that the Senators, in the Days of Romulus, were elected by the PEOPLE. But he nowhere gives any hint of such Election, and we find, that in the very next instance, where he employs the Verb *creare* in the making a Magistrate, it imports the *Electing, Constituting* power, *Regem CREATE* (say the Senate to the People after the Death of Romulus,) *ita Patribus visum est. Patres deinde, si dignum, qui secundus ab Romulo numeretur, CREARITIS, auctores fient.* And in all the other instances, mentioned by M. VERTOT, of Senators made by the Kings, the verb *legere*, not *creare*, is used. *Principes Albanorum in Patres—LEGIT [Tullus Hostilius.]—Centum in Patres LEGIT [Tarquinius Priscus.]—Statuit nullos in Patres LEGERE [Tarquinius Superbus.]* And so likewise in the Speech of Canuleius the Tribune, it is *LECTI ab Regibus.*

In the above cited Passage from Dr. Middleton, he grants, we see, that as far as the Argument is concerned with the regal Government of Rome, Lord Hervey has the Latine Writers on his

\* We shall see hereafter what Credit is to be given to his Professions.

*Observations on Dr. MIDDLETON's Treatise*

side, who constantly speak of the Creation of Senators as a Branch of the Royal Prerogative. If this be so, may we not reasonably urge, against the Dr. that, whatever Dionysius or any other foreigner may say, or seem to say, of *Elections of Senators by the People in the time of the Kings*, he ought not to be credited; or his words ought to be so interpreted as to be consistent with the testimony of *ALL the Latine Writers*? I say, may we not urge this against the Dr.? since he employs the like reasoning (in p. 53 of his Treatise) against M. VERTOT; who, having granted, that the sole right of creating Senators [in the consular State] is attributed to the People by two, the most celebrated Writers of the Republic [Cicero and Livy,] adds "That all the facts and examples of History are clearly against it?" Now what is Dr. Middleton's answer to this? "Whatever those facts may seem to intimate on a slight view, and at this distance of time, yet it is certain, that they must admit such an Interpretation, as is consistent with a Testimony so precise and so authentic."

But to so authentic a Testimony, the Dr. in the present Case, Treat. p. 20. prefers the single Testimony of Dionysius, "Must we prefer one Greek to all the Latin Writers? Yes, as we prefer one credible and positive Evidence, to many of a negative kind; or one, who searches things to the bottom, to any number, who, without the pains of searching, take up with the popular and vulgar accounts of Things."

"But of all the Roman Writers, whom your Lordship has cited, as Livy is the chief, so he will be found perhaps to be the onely one, who in the present case deserves any regard from us; the rest of them for the most part, being but transcribers or epitomizers of him, rather than Historians, so that in effect, it is the single credit of Livy, which in the question before us, stands opposed to Dionysius, and where these two happen to differ, it cannot be difficult to decide, which of them ought to have the Preference, nay it is already decided by the Judgement \* of all the best Critics; who upon comparison have already preferred the diligence and accuracy of Dionysius, to the haste and negligence of Livy."

\* The Equity of this Judgment we shall examine in the Course of these Observations.

Well,



Well, what says the Oracle, Dionysius? — "This celebrated Writer informs us, that when Romulus had formed the Project of his Senate consisting of an hundred members, he reserved to himself the Nomination only of the first, or President of the Assembly, and gave the choice of all the rest to the People, to be made by a Vote of their Tribes and their Curiae." Treat. p. 20.

The Dr. (presently after) proceeding in his History, gives us Dionysius's Account of the Creation of 100 Sabine Senators, by the Votes of the People; and, when he has remarked upon it, adds, "As far as the Case can be determined by AUTHORITY, Ibid. p. 22. AUTHORITY, the Character of DIONYSIUS will bear us out in adhering to him preferably to all others, especially in Points of Antiquity, or Things remote from their own Knowledge."

"Let us examine therefore in the next place, what FACTS may be collected within this Period to confirm the Testimony of Dionysius."

"All Historians agree, that great Powers and Privileges were ORIGINALLY granted to the PEOPLE by ROMULUS, who had no sooner secured his new City by a Wall, than he began to provide LAWS for the Citizens; because nothing else could unite a Multitude into one common Body. This was his first Care, according to LIVY; and one of his first LAWS, according to DIONYSIUS, was to divide the People into THREE TRIBES, and each Tribe into TEN CURIAE, for the more convenient method of voting and transacting the public Business in these Assemblies."

That THIS was one of the first LAWS of ROMULUS, is a particular which ought to have been placed under the Head of AUTHORITY, and not of FACTS confirming the Testimony of Dionysius. For though it be reported by Dionysius, it is as really denied by LIVY, as that the Election of the 100 FIRST SENATORS was made by the CURIAE; and that an Addition was made to the SENATE of 100 SABINES: which two particulars are, by the Dr. himself, placed under the Head of AUTHORITY, and are so placed by him for this Reason, that though the first

\* This Account has been already considered. Vid. *supr.* p. 44, 45, 46.

† Vocata ad Concilium multitudo, quæ coalescere in populi unius corpus nulla alia re præterquam Legibus poterat, JURA DEDIT. Liv. Lib. 1. c. 8.

be indirectly, and the second expressly contradicted by LIVY, they have the Testimony of DIONYSIUS the best Historian (in the Dr's Opinion) for their Voucher.

Treat. p. 25.

Under the Head of FACTS confirming the Testimony of Dionysius, the Dr. places likewise the particular Privileges (said by Dionysius to have been) granted to the *Comitia Curiata*, viz. "the choice of all the Magistrates, and the Right of making Laws, War, and Peace \*."

p. 26.

The Dr. then speaks of the Transfer by King Servius Tullius of all those Privileges, from the PEOPLE, assembled by CURIAE, to the same PEOPLE assembled by CENTURIES; which (as the Dr. observes) was, in effect, transferring them from the poorer Sort to the Rich. And then the Dr. goes on thus:

p. 27.

"These FACTS, confirmed by ALL † Writers, shew the Power of the PEOPLE to have been extremely great, even under the regal Government. It extended to the Choice, not only of their KINGS, but of all the other MAGISTRATES, and I find no reason to imagine, that the SENATORS were excepted, or none, at least, sufficient to balance the contrary Testimony of so GRAVE an Author, as Dionysius.

The Dr. then speaks of the Alban Nobles, admitted into the Senate by King Tullus Hostilius, and observes, that it is intimated by DIONYSIUS, that "this Affair was not transacted, without the consent, both of the Senate and of the People."

p. 29, 30.

But it happens, that the grave Author, the diligent, the accurate, the faithful, the best Historian, DIONYSIUS, says nothing of the PEOPLE as concerned in the Creation of Tarquin's 100 Senators *minorum Gentium*. The Dr. however, to this Objecti-

\* Livy speaks of the Division of the People into Curiae, as posterior to the Union of the Romans with the Sabines; which Union the Dr. places in the 14th or 12th year of Romulus's reign. Livy therefore could not think that the 100 first senators of Romulus were chosen by the People, assembled by Curiae. See Liv. Lib. 1. c. 19.

† That the Privileges of the CURIAE were all, or almost all, transferred to the CENTURIES will readily be admitted; because Livy agrees with Dionysius in this particular: But that the Privileges of the CURIAE were such as Dionysius reports may well be questioned; and I think it will not be found that ALL Writers confirm these FACTS. The Dr. does not cite any one of ALL the Writers by whom, he says, those FACTS are confirmed.

on



on has a ready Answer, which has been already taken notice of: It is in his connected Letter to Lord HARVEY, and ends with these Words, "I cannot help thinking, that as far as AUTHORITY reaches, my Hypothesis must appear to be better grounded than your Lordship's."

Vid. supr. p.

12, 13.

Treat. p. 31.

By this we see, that, according to the Dr. himself, the TESTIMONY or AUTHORITY of Dionysius, and the FACTS confirming the Testimony of Dionysius, are the same, not different Arguments.

The Dr. continues: "I shall consider therefore, in the last Place, how far it [my Hypothesis] is confirmed by Arguments drawn from the Nature and fundamental Principles of the Roman Government, as it was administered under the Kings."

NATURE  
AND PRINCIPLES  
OF THE  
ROMAN GOVERNMENT.

We shall presently find that this third Sort of Arguments is reducible, like the second, to the bare AUTHORITY of Dionysius; the Reasonings having no Foundation but those FACTS, which have no Evidence but Dionysius's Report.

But let us see how the Dr. reasons.

"THE first Citizens of Rome were all voluntary Adventurers, whom their young Leader, ROMULUS, had no Power to force, or means to attach to his Service, but the Promise of large Immunities and Rights, and a Share with him in the Administration of their common Affairs. This Indulgence was necessary to his Circumstances;

"And we find accordingly, that he granted them all the Privileges, even of a DEMOCRACY; the Right of making LAWS, WAR, and PEACE, with the CHOICE of all their MAGISTRATES, and most probably THEREFORE of the SENATORS.

"Now when these Rights had been once granted, and possessed by the PEOPLE, it is not credible, that they would ever suffer themselves to be deprived of them;

Treat. p. 32,

33, 34.

"Or that KINGS elective, and of so limited a Jurisdiction, should be disposed, or able to wrest them wholly out of their hands.

"Their first King ROMULUS no sooner began to violate the Constitutions, that he himself had made, than, as it is commonly believed, he was privately taken off, and their last King, Tarquinius, by a more open and violent infringement of their

" Liberties, not only lost his Crown, but gave Occasion to the  
 " utter Extinction of the kingly Government.

" The intermediate Kings do not seem to have made any At-  
 " tempt upon the Liberties of the People: For in the Case above-  
 " mentioned, when Servius Tullius contrived to reduce the Au-  
 " thority of the poorer Sort, it was to advance that of the rich,  
 " and to change only the *Hands*, not the *Power* of his Masters:  
 " to whom, as Cicero intimates, and as Seneca, upon his Au-  
 " thority, declares, there lay an Appeal from the Magistrates,  
 " and even from the Kings themselves \*.

" The Kings indeed, by Virtue of their Office, must needs  
 " have had a great Influence upon the Deliberations of the Peo-  
 " ple. It was their Prerogative to call the People together; to  
 " preside in their Assemblies; to propose the Affairs to be de-  
 " bated, or the Persons to be elected, and to deliver their own  
 " Opinion the first. So that we need not wonder, that the  
 " Writers who are not treating the matter critically, should  
 " impute to them the Result of all the public Councils. They  
 " constantly do it in the *Affair of War and Peace*, which yet  
 " was the unquestionable Prerogative of the PEOPLE; and when  
 " they do it therefore in the Case before us, it cannot be al-  
 " ledged, as an Argument of any Weight against the People's  
 " Right of chusing Senators.

" On the whole, since the Origin of Rome itself is involved  
 " in Fable and Obscurity, it is not strange, that the first Trans-  
 " actions of its Citizens should also be obscure and uncertain.  
 " But upon the strictest Search into the State of the present  
 " Question, as it stood under the kingly Government, I cannot  
 " but conclude, from the express Testimony of the best Historian,  
 " the Concurrence of similar Facts, and the Probability of the  
 " Thing itself, that the RIGHT of chusing Senators was original-  
 " ly and constitutionally vested in the PEOPLE."

" \* Partim regis institutis, partim etiam legibus auspicia, cæremoniz, provo-  
 " cationes &c. Cic. Tusc. Quest. 4. 1.

" Æque notat, Romulum perisse solis defectione. Provocationem ad Populum  
 " etiam a regibus fuisse. Id ita in Pontificalibus libris aliqui putant, et Fenestella.  
 " Senec. Epist. 108."



To these Extracts from the first Part of the Dr's Treatise, I shall add what he says in the 2d part, §. 1, where he treats of the Power and Jurisdiction of the Roman Senate.

" I have already shewn, how by the ORIGINAL Constitution of the Government, *even under the KINGS, the collective Body of the PEOPLE was the real Sovereign of Rome, and the dernier Resort in all Cases.* But their Power, though supreme and final, was yet qualified by this Check, that they could not regularly enact any Thing, which had not been *previously* considered, and approved by the SENATE. This was the Foundation of the senatorian Power, as we find it set forth in one of their first Decrees, concerning the Choice of a King, where it is declared, *that an Election made by the People should be valid; provided, that it was made with the Authority of the Senate \**"

THE learned Dr. CHAPMAN seems disposed to believe the whole of Dionysius's Story; not only what he writes concerning the *illustrious, virtuous* Builders of Rome, but his account of the Proceedings of ROMULUS, after the City was built. THAT "the Power of ROMULUS, as Head of the Colony, expiring with the Building of Rome, he was under a Necessity of assembling the People to consider what Form of Government should be established in their new city." Essay, p. 1.

That they having been educated under a *limited Monarchy*, declared for *that*, and desired him to accept of the Government.

That he hesitated upon the Matter, till he had consulted the Gods, and till the Gods had, by a Flash of Lightning on the left, declared their Approbation of the People's Choice; and that then the People proceeded to *elect* him, in FORM, to be their KING.

That the next step was to muster the forces, and that "these, P. 6, 7, 8. as it is supposed, being found to consist of a little above

\* Patres decreverunt, ut, cum Populus regem jussisset, id sic ratum esset, si Patres auctores fierent. Liv. 1, 17: The Dr's Translation of these words most certainly does not express Livy's meaning; but we shall have a more proper occasion hereafter to consider it. The Power of the PEOPLE was not FINAL; by the original Constitution they were not, according to either *Dionysius* or *Livy*, the *Dernier Resort* in all Cases, in the time of the KINGS.

*Observations on Dr. MIDDLETON's Treatise,*

" 3000 \* were divided into three equal Parts, called *Tribes* or  
 " *Thirds*, under the command of as many Officers stiled *Tri-*  
 " *bunes*."

That " each of these *Tribes* were afterwards divided into ten  
 " *Curias*, or Companies of a hundred Men commanded by a  
 " *Centurion* †; and each *Curia* again subdivided into ten ‡ *De-*  
 " *curies*, or Bodies of ten Men, under the Command of a *De-*  
 " *curion*. The City itself was divided likewise into three *Tribes*,  
 " each of which was subdivided into ten *Curias* or Parishes;  
 " every *Curia* having a particular *Curio* or priest to itself."

" And the whole Territory of the Romans, which is suppos-  
 " ed, by *Strabo*, not to have exceeded *five or six Miles in Cir-*  
 " *cumference* § (except what was reserved for the Service of Religion  
 " and the Support of the Government) being divided into 30 equal  
 " parts, every *Curia* had one Part assigned them by Lot: and  
 " thus an *Equality of Property* was established at Rome, much  
 " resembling that at Lacedæmon."

" \* Dionysius l. 2. c. 16. supposes the Roman forces at this time not to amount  
 " to quite 2000 foot, and 300 horse; but Plutarch makes them 3000 foot, and  
 " his account has been generally followed." *Livy* does not pretend to know  
 any thing of this particular; but he tells us, that *Romulus* when he had built the  
 City, and prescribed Laws to his People, and, to make his Laws be respected,  
 had provided himself with a fine Robe, a Chair of State, and 12 attendant-  
 Lictors, opened an Asylum for all Sorts of varlets and vagabonds, and that the  
 State by this means became a match, in strength, for any of its neighbours.

" † Οὗς αὐτοὶ (they the Romans) κερύωντες οὐραμαστῶν, are the words of the text;  
 " but I apprehend, that, by a mistake of the Transcriber, κερύωντες is put for κερ-  
 " τήρωντες. For it is certain, that the *Curiones* were not military, but religious  
 " Officers. Essay p. 7.

" ‡ Dionysius Halicarnassensis (says Mr. Kennet) expressly affirms that each *Curia*  
 " was subdivided into *Decuriae*, and these lesser bodies governed by *Decu-*  
 " *riones*. And, upon the Strength of his Authority, most Compilers of the  
 " Roman Customs give the same Account without any Scruple. But 'tis the  
 " Opinion of the learned *Grævius* [Præf. ad 1. vol. Theſ. Antiq. Rom.] that  
 " since *Dionysius* is not seconded, in this part of his Relation, by any ancient  
 " Writer, we ought to think it was a Mistake in that *Great Man* [who, in all  
 " Probability, knew very little of the Subject he was writing upon at large]  
 " and that by Forgetfulness, he attributed such a Division to the *Curia* as be-  
 " longed properly to the *Turma* in the Army." Kennet's Antiq. Part 2. B. 3.  
 c. 16.

" § The learned Writer, it is probable, meant to say *Extent*, it being so in  
*Strabo*, to whom he refers.

" This



" This Distribution of Property (says the learned Writer in a Note) is a strong Proof that the Roman Government was originally very far from being monarchical. For as Harrington justly observes, the Overbalance of Land three to one, or thereabouts, in the People; or where neither one nor the few overbalance the whole People, creates popular Government, &c\*."

" As there was this Equality of Property among the Romans, they all paid equal Taxes, and were obliged equally to serve the public at their own Expence. But this, which was very † reasonable at first, in Process of time became much otherwise, when many, who had lost their Properties, were forced to contribute as largely to the Support of the Government, as those who had doubled or trebled them. This Hardship was however remedied by Servius Tullius, who, by a Law for that Purpose, proportioned to the Value of every Man's Estate, the

\* If the Territory of Rome was only five Miles in Circumference, the Estate of each Roman, by an equal Division of the lands among 3000, would have been less than half an Acre, though no Part had been reserved for the King or the Service of Religion. LIVY says nothing of this equal Distribution of the Lands, nor Plutarch in his Life of Romulus. Nor, supposing the thing true, will it follow, that the Roman Government was originally very far from being monarchical: for, in order to that Conclusion, even from the Principles of Harrington, it must be certified, that the Shares of the Land, reserved for the King, and the Service of RELIGION (of which the King was superintendant) were not more than equal to that, which was divided among the People.

M. Vertot says, (I know not upon what Authority) that the Portion of Hist. des Rev. each citizen was two Acres and no more: and if this be true, and if the Boun- Rom. Vol. I. dary of the Roman Territory, at the Building of the City, was between the P. 12. 64. fifth and sixth Mile-Stone, as was believed by the Romans in Strabo's time (whom M. Vertot cites) we must conclude that the King's Share overbalanced that of the whole People; and consequently the Government was monarchical.

† That this was not more reasonable, at first, than it was afterwards, is certain, if Dionysius's Story of the first Builders of Rome is to be credited: For, according to him, there was a numerous Body of opulent Noblemen engaged in that Enterprize. — χρημασιν, ως εν τοις τότε καιροις, ευποροις, D. H. p. 83.— Vid. supr. p. 20, 21, 49.

\* Μία μὲν γὰρ τε σιμὴ καὶ τε ἐκτε λυθὲν τα μιλία διασημαίνονται τῆς Ῥώμης καλεῖται ποταμὸς Φηγοί· τούτου δ' ὀρίον ἀποφαίνουσι τῆς τότε Ῥωμαίων γῆς. οὐδ' ἡρομένησις δύσκειν ἐπὶ λυθὲν, ἔταυθα τε καὶ ἄλλοις τοποῖς πλῆθος, ὡς ὀρίον ἀνθημερον, ἢ καλεῖται Ἀδα- ρωια [leg. ἀμδαρυνία] Strabo L. 5. p. 230.

" Taxes

“ Taxes he was to pay, and the Services he was bound to perform : From this time therefore, they, whose extensive Properties required a greater Degree of Protection, contributed both by Money and personal Service, to the Support of the Public in a greater Proportion; and in Return for this, it was thought but reasonable, that they also have a proportionably larger Share in the Government of the State. Hence, Affairs of the greatest Importance, which had hitherto been determined in the COMITIA CURIATA, wherein the Voice of each individual was of equal Weight, were transferred to the COMITIA CENTURIATA, in which, those of the PATRICIAN and EQUESTRIAN Orders had a clear Majority; the whole Number of Centuries being but 193, 98 of which were ENTIRELY COMPOSED OF THEM \*.

“ The Distribution of Power succeeded to that of Property, and was made in the following manner. Those who were more illustrious by Descent, and more eminent for their Virtue were separated from the Body of the People, and distinguished with the Title of PATRES, or Noblesse; whilst the rest, who were of obscure Birth and mean Abilities, were stiled PLEBEIANS or COMMONS.

“ By express Laws for that Purpose, the Priesthood, all civil Magistracies, the Administration of Justice, and the Direction of all public Affairs in Conjunction with the King, were to belong solely to the PATRICIANS †, whilst the Plebeians were directed to cultivate their Lands, feed their Flocks, and exercise gainful Trades.

\* This is so absolutely incredible that I am at a Loss to guess how it could enter into the mind of the learned Writer. I have not observed that Dionysius himself has said that 98 Centuries were composed *intirely* of Knights and Patricians, though he says inconsiderately and inconsistently with himself, that the Patricians were *more powerful*, than the Plebeians, in the Comitia by Centuries, vid. *supr.* p. 51. What a Multitude of Nobles must there have been in the petty State of Rome, if, of 98 Centuries, the 18 of Knights were partly Patricians, [see Essay, p. 16.] and the other eighty were composed of Patricians only! It brings to my Remembrance a Question, asked an Acquaintance of mine, by a foreign Nobleman in the Year 1715, *Whether the News was true, that 40000 My-lords were up in Arms in Scotland?*

If Patricians were in such Plenty in the Reign of Servius Tullius, what shall we think of Festus's Scarcity of Patricians at the Regifuge? Vid. *supr.* p. 49.

† Dionysius says to the *Εὐπατρίδας* [or PATRES.] Vid. *supr.* p. 21.

“ But



" But lest so considerable a Distinction, made between those  
" who were so lately Equals, should give Birth to Pride and  
" Insolence on the one Hand, and Jealousy and Discontent on  
" the other, the latter were ordered to choose themselves PATRONS  
" from among the former, who were to assist them gratis with  
" their Advice &c."

The Dr. then gives Dionysius's Account of the Creation of a  
Senate consisting of 100 Persons, chosen out of the Patrician Or-  
der; Romulus " himself appointed one, to be the *Prince of the* Essay, p. 14.  
" Senate, or first Senator, whom he considered as the properest  
" Person to govern the City, when he was obliged to take the  
" Field, at the Head of the Troops;" then he directed the Peo-  
ple to chuse the other 99; of which each of the 3 Tribes chose  
three, and each of the 30 Curias chose as many.

After this, 300 young Men were, pursuant to the King's Di-  
rection, *chosen by the PEOPLE*, to be the constant Guard of the  
King's Person. They were at first stiled *Celeres*, afterwards *Equi-*  
*tes* or Knights. The Dr. proceeds.

" As the Senate and People were each of them to have a Share Essay, p. 17.  
" in the Government with the King, in Consequence of its be-  
" ing a *limited Monarchy*," the respective Rights and Powers of  
the three Estates were settled and ascertained.

" By the Constitution of the Roman Government, the Su- KING.  
" premacy in all Affairs of Religion, the Care and Guardian- Essay, p. 18.  
" ship of all Laws, as well those established by Nature and the  
" common Consent of Mankind, as those enacted by public Au-  
" thority, and the chief Command in War, were vested in the  
" KING.

" To him was given also the Cognizance of all enormous  
" Crimes (those of an inferior Nature being left to the Sena-  
" tors, whose Determinations he had however a Right to review  
" and correct.)

" And the sole Power of assembling the Senate or People,  
" together with the Privilege of delivering his Opinion first.

" But then it was *expressly declared that he should submit to*  
" *whatever was determined by a Plurality of Voices.*

SENATE.

Essay, p. 20.

" THE Right of deliberating upon, and deciding by Suffrage  
 " Affairs of all kinds that should be laid before them by the  
 " King, was left to the SENATE.

PEOPLE.

" AND the Power of electing Magistrates, enacting Laws,  
 " and making Peace or War was granted to the PEOPLE.

" But these Powers they could not properly exercise with-  
 " out the Permission of the King, and much less without the  
 " concurrent Authority of the Senate. For the Determinations  
 " of the People in their Assemblies which were held by Curias,  
 " were afterwards referred to the Senate, in order to be ratified  
 " by their Decrees, though in Process of Time this Usage was  
 " quite reversed.

Essay p. 22.

" Such were the Regulations established in the Roman Go-  
 " vernment,—From them, I think, it is evident that the  
 " Election of the Senate, as related above from Dionysius  
 " of Halicarnassus, was conducted with all the Formality re-  
 " quired by the fundamental Laws of the Roman Constitution.  
 " —There appears to me such a Harmony and Consistence  
 " between his Account of the Senate, and what the same Au-  
 " thor says of the other Parts of the Roman Constitution, that  
 " they must stand or fall together; and I must own, that  
 " in Case he had not informed us, in what Manner the Elec-  
 " tion of Senators was made, I could scarce have believed they  
 " were nominated by the King. For would it appear at all pro-  
 " bable, that a Prince, whose Power was little more than that  
 " of a Stadtholder, and who could not so much as chuse a  
 " Guard for his own Person; should either have the Nomina-  
 " tion of a Senate, who were empowered to control the Pro-  
 " ceedings of the People, or be subject to have his Opinion over-  
 " ruled by a Majority of his own Creatures \* ?"

\* The learned Writer in this Argument takes for granted an unsupported incredible part of Dionysius's Tale, *That the King could not chuse a Guard for his own Person.* And as to the Question, *Will it appear at all probable, &c?* we may answer, *Will it appear more probable, that the PEOPLE should either have the Nomination of a Senate, who were empowered to control the proceedings of the PEOPLE, or be subject to have their Opinion over-ruled by a Majority of their own Creatures?* both which the learned Writer supposes to be true, in fact.



By the Extracts, above given, from the two learned Drs. it appears (if I mistake them not) that the Sum of the Argument by which they are induced to think that *the Right of choosing SENATORS was originally and constitutionally vested in the PEOPLE, and that the PEOPLE during the Regal State, did always chuse the SENATORS*, is, as follows.

1. ROME was *originally and constitutionally* an ELECTIVE Monarchy, which makes it reasonable to believe that the Power of the Monarch was confined within very narrow Bounds.
2. THE particular Circumstances of Romulus, were such as made it necessary for him to promise his first Citizens a Share with him in the Administration of public Affairs:
3. AND we find, that, in fact, Romulus granted the first Citizens of Rome all the Privileges of a *Democracy*; the Right of making LAWS, WAR and PEACE, with *the Choice of all their MAGISTRATES*:

THEREFORE it is PROBABLE that he granted them the Choice of the SENATORS.

And if the Right of choosing the SENATORS was granted by ROMULUS to the PEOPLE, it is not credible that the PEOPLE, once possessed of this Right, would ever suffer themselves to be deprived of it.

THEREFORE, it is PROBABLE that the SENATORS were *always chose* by the PEOPLE.

AND that, *in FACT*, the PEOPLE did *always chuse* the SENATORS in the Times of the KINGS, is sufficiently evident by the single Testimony of Dionysius, (the most diligent, the most faithful, the BEST Historian) who gives us *some Instances*, where the KINGS referred the Choice of the SENATORS to the PEOPLE; [but never says, that they had a constitutional Right to that Privilege.]

NOW, to my Apprehension, the *Premisses*, in this Argumentation, are neither certain, nor probable.

And, were they certain, they do not contain the Conclusions which the learned Doctors imagine they find in them.

1. It does not appear that Rome was *originally and constitutionally* an ELECTIVE Kingdom, though it happened that some of its Kings were *elected* to the Government. No Author, but Dionysius,

Vid. *supr.* p.  
25.

onyfius, speaks of a *formal Election* of ROMULUS to the Throne. Plutarch has not followed Dionyfius in this particular; and the Supposition of Romulus's assembling his Followers, and leaving to them the Choice of a Form of Government, and, afterwards, of a Governor, is contrary to the very Intention \* with which Numitor is said, by Dionyfius himself, to have put his Grandsons at the Head of the Colony.

Nor is Romulus represented by Dionyfius as leaving the People free to chuse a *Democracy*. He tells them, that, among many Forms of Government, there are *three* much more esteemed than the rest; but he does not once mention to them a *popular Government*; he proposes to their Choice no other Forms but *Monarchy* and *Oligarchy* †.

According to LIVY, there was no Question concerning the Government of the Colony, but *which of the two Brothers should be the Governor?*

And this Question was to have been decided by some Birds; but these not being clear in their Answer, a Dispute arose, which the Death of Remus put an end to: In turba ictus Remus cecidit—*Ita solus potitus imperio Romulus.* Liv. L. 1. c. 7.

If Romulus had left a Son, that Son would doubtless have succeeded him as Heir of the Crown. For the Romans were a Colony from Alba, and the ancient Government of Alba was Monarchy, continued down, for many Ages, in a lineal Succession. "SPANHEIM (says Dr. Chapman) has proved at large, " that it was usual for all Colonies to adopt the Religion, Government and Laws of the State from whence they came; " and Strabo (L. 5.) expressly says, that the Romans copied every thing of this kind from *Alba*, which was their Mother-City. " This being the Case, it will be no longer Matter of Surprise " that so excellent a Form of Government should be established by a Person of Romulus's Youth and Inexperience: for " it is not the Founder of Rome, but of Alba, whose skill in " the Arts of Policy and Legislation we must admire."

\* Επειδή γὰρ Ἀμύντις τελευτήσαντις ἀνενοστάτο τὴν ἀρχὴν ὁ Νουμίτωρ—εὐθύς ἐπένοει τοῖς μετὰ τὸν αὐτὸν ἀρχὴν κατασκευάσαι, ἑτέραν πόλιν οἰκίσαι. D. H. p. 72.

† ἢ ἢν τε αὐτὸς βουλευσάμενος ἐπὶ σχολῆς εὐτελεῖν εἴτε ὑφ' ἑνὸς ἀρχεσθαι θύλασιν ἀνδρὸς οἷς ὑπ' ὀλίγων. D. H. p. 79.

That



That Numa, Tullus Hostilius, and Ancus Marcius, who successively reigned after Romulus, were *elected* to the Throne, is no Proof that Rome was *originally* and *constitutionally* an *elective* Kingdom: Romulus dying without Children, there was no Way of filling the Throne but by Election, or Usurpation; which latter no one Citizen of Rome had then Power enough to effect.

That the Sovereignty of Rome was considered by the Romans themselves as *originally* and *constitutionally* hereditary, (notwithstanding the successive Elections of Numa, Tullus and Ancus) is sufficiently evident from the Arts, and the Bribery employed by Tarquin the elder, to defraud, of their Succession to the Crown, the Sons of Ancus Marcius, the first of the Roman Kings who left Male Heirs: These Heirs were Minors at the Death of their Father, and when they came to be of Age, *accused Tarquin, their Guardian, of Fraud and Injustice, in depriving them of their Father's Kingdom* \*.

Nay, after the Romans had violated *hereditary Right*, by raising Tarquin the elder to the Throne, to the Prejudice of the Sons of Ancus, we find that the Notion of a legal Right, in the Sons of a King, to inherit their Father's Crown, prevailed very much at Rome. For, upon the Murder of the elder Tarquin, his Widow urges Servius Tullius to take into his Hands the Reins of Government, in order to secure the Kingdom to Tarquin's Sons; believing, that Servius, as a grateful, and *honest* Man, would certainly put the *elder* into Possession of the Throne, when he should be old enough to govern †.

\* Tum Anci filii duo, etsi antea semper pro indignissimo habuerant, se patrio regno tutoris fraude pullos, &c. Liv. L. 1. c. 40.

—Tum commune Romani nominis, tam precipue id domus suae dedecus fore, si Anci Regis virili stirpe salva, non modo advenis, sed servis etiam Regnum Romae pateret. *ibid.*

“Lucius Tarquinius a stranger, come from Tarquinii, was he made King of Rome, though the Children of Ancus were living?” [*L. Tarquinium incolam ab Tarquinii, vivis liberis Anci, regem factum?*] says Canuleius, the Tribune, in Livy. The words, *though the Children of Ancus were living*, would have been impertinent, if the Crown had been originally and constitutionally elective.

† δυνατος δ' εἰ, Τυλλίε, ὅταν εἴς ἀνδρᾶς εἰδῶσι καὶ τὰ νομὰ πρὸς αὐτὸν ἵνα αὐτὸν γένῃσι, τοὺς πρεσβυτέροισι αὐτῶν ἀποδοῦναι Ρωμαίων τιμῶνα. D. Hal. p. 210.

*Observations on Dr. MIDDLETON's Treatise,*

And SERVIUS TULLIUS, as GUARDIAN to the CHILDREN, takes Possession of the Government, without any Opposition from Senate or Commons.

Farther; "when he had been some time King, he intseats the PEOPLE assembled, in Comitia, to consider themselves as the Guardians of Tarquin's Children, and to confirm to them the Throne which their Father had left them \*."

And he assures the Assembly, "That he had not taken Possession of the Kingdom as his own, but purely with a View of being serviceable to Tarquin's Family. I beseech you therefore, (says he) do not desert these Orphans, who are in danger of losing the Kingdom †."

The Roman Kingdom (as I said before) would doubtless have proved hereditary, if Romulus had left Male Heirs ‡: but, he dying

\* δοξατε εν κοινη παντες επιτροποι καταλειφθαι των παιδιων, και βεβαιωτε αυτοις ην ο πατρις καταλιπεν αρχην. D. H. p. 214.

† ου γαρ ιδιαν αρχην εμαυτω κατασκευαζομενος—αλλα τω Ταρκυνιω γενει βοηθων τα κοινα πραττειν προσημαι. ικετης δε υμων γιγνομαι μητε τους ορφανους καταλιπειν,—υπερ της αρχης κινδυνευουσας. Ibid.

‡ The ingenious Mr. Moyle, speaking of the Constitution of the Roman Monarchy, though at first he supposes it elective, yet afterwards says, "Whether it was first designed by Romulus, or instituted by the Romans after his Death, is uncertain, though I am apt to believe, that ROMULUS, having no Children, as in his Life time he gave Liberty to Alba, which descended to him by the Death of his Grandfather Numitor; so, after his Death, he designed at least to have left the Election of their Kings to the People, without appointing any Successor of his own Nomination." And, in p. 65, "Another Cause, says he, [of the Generation of the Roman Commonwealth] was their Kings leaving no Issue behind them, (at least of Age and Abilities to command) who by the Numbers of his Father's Dependents and Retainers, might have pretended to the Crown, and made it hereditary."

Moyle's Works, p. 61.

We see that this ingenious Writer seems to be of opinion, that the Roman Monarchy became elective by ROMULUS's dying without Issue, and without appointing a Successor of his own Nomination, and not that it was originally and constitutionally ELECTIVE.

That conceit of PLUTARCH's, (mentioned by Mr. Moyle) that Romulus gave liberty to Alba, which he might legally have possessed himself of, as grandson to Numitor; that Conceit, I say, though it be unquestionably groundless, seems to indicate, that, in the opinion of the Historian, the Crown of Alba was to descend to the King's Progeny, whether legitimate or spurious, Male or Female; for Romulus was no otherwise Heir to Numitor, than as a Bastard of Numitor's Vestal-Daughter. And if this was constitutional at Alba, we must suppose it was



dying without such Heirs, it became an *elective Kingdom*, or rather an *elective Government*, the People being now free to establish any Form of Government they should like best. The SENATE tried, for a whole Year, (the Year of the *Interregnum*) whether the People would endure an *Aristocracy*, and, finding they would not, called them together, and, according to Dionysius, asked them, whether they would be governed by a *King*, or by *annual Magistrates*. The People left the Choice to the *Fathers*, who thereupon declared for *kingly Government* \*; and *Numa* was chosen to succeed *Romulus* in the Throne.

LIVY

was originally so at Rome: But there is no Evidence, that it was constitutional in either State.

Had it been customary for Females to inherit the Alban Crown, or for the Crown to pass through Females to their male Offspring, Ancus Marcius, as the Grandson of Numa by a Daughter, would doubtless have had an hereditary Right to the Crown of Rome; which yet is never pretended; though we find the sons of Ancus, and the Sons of Tarquin (at different Periods) claiming an hereditary Title to it.

But as to the disinterested Conduct of Romulus, reported by Plutarch, and by him only, I have observed, on another Occasion, that there is no Evidence of Romulus's outliving Numitor; and that what Plutarch says on this Subject seems wholly built on the Supposition of the Truth of the old Chronology, which supposes Amulius to have reigned forty Years before Numitor succeeded him, and Romulus to have reigned 38 Years at Rome, after Numitor's second Accession to the Throne of Alba: In which case we must suppose Romulus to have survived his Grandfather. Dionysius, in his 5th Book, cites Licinius as reporting, that by the Death of Numitor, the Royal Family was extinct [consequently Romulus was not then living, or was not reckoned Heir of Numitor,] and that the Albans chose themselves annual Magistrates to whom they gave the Title of Dictators, but whose Authority was equal to that of Kings. But Livy expressly affirms that Alba, after the Death of Numitor, was governed by a King, named Cluilius. This Cluilius dying suddenly in his Camp, while in War with King Tullus Hostilius, the Albans chose a General to conduct the War.

Remarks on the Hist. of the 7 Roman Kings, p. xiii.

\* Τότε δὲ συναλεσάμενες εἰς ἐκκλησίαν τὸ πλῆθος οἱ βασιλεῖς κατὰ φύλας τε καὶ φράτρας, ἀπέδωκαν αὐτῷ, περὶ τῆ κοινῆς τῆς πόλεως σκοπεῖν, εἴτε βασιλεῖ βασιλεῖαι τὰ κοινὰ ἐπιτρέπειν, εἴτε ἀρχαῖς ἐνιαυσίοις. οὐ μὴν οὐ γὰρ δῆμος ἐφ' αὐτῷ τὴν ἀρετὴν ἐποίησεν, D. Hal. p. 119 & 120.

\* Dionysius tells us that, according to some Authors, Ancus being of Numa's Blood, and perceiving that Tullus intended his own Sons should succeed him in the Throne, flew by Treachery the whole Royal Family. p. 176. But Dionysius rejects this, and gives an admirable Reason for his Disbelief. How did Ancus know that the People would chuse him to be their King? And, suppose him sure of his Election, it was still necessary that it should be confirmed by happy Auguries from the Gods. Now what God or Genius would have suffered that such a vile Murderer should come near their Altars, to perform any religious Rite?

αλλ.

LIVY represents both *Senate* and *Commons*, as desirous of a KING (from the very beginning of the Inter-regnum) and the Historian gives this Reason for it, that *they had not yet tasted the Sweets of Liberty\**; which if true, how can we suppose, that *Romulus* had granted the People (as the two Drs. believe) *all the Privileges of a Democracy?*

Vid. supr.  
P. 91.

2. It is neither certain, nor probable, that the Circumstances of *Romulus* were such as made it necessary for him to promise his *first Citizens* a Share in the Administration. They were "*voluntary Adventurers* (says Dr. Middleton) whom their young Leader had no Power to force, or Means to attach to his Service," but such a Promise. It will be readily granted, that *Romulus* had no Power to force them to become his Followers and Subjects. They were doubtless Volunteers in that respect. Nevertheless, to attach to his Service a Company of beggarly Rustics, the Prospect or Hope of bettering their Condition may well be supposed sufficient, without his promising to make them Members of Parliament, or even Common-Council-men. And as to his chief † Strength, the *main Body* of his People, which was collected by means of his Asylum, these, though not compelled by him, were urged and impelled by Poverty, the Miseries of Slavery, or Fear of the Hangman, to put themselves under his Banner, and receive his Laws.

Dr. Middleton, when he says that a *Promise*, to the *voluntary Adventurers*, of large Immunities and Rights, and a Share with

αλλ' απεδωκε τοις βουλευταις την διαγωγην, ως αγαπητων οποιεραν αν εκεινοι δοκιμασωσι των πολλειων. τοις δε βασιλικην μεν εδωκεν καταστησασθαι πολιτειαν απασι.

So likewise upon the Death of King *Ancus Marcius*, the PEOPLE, according to *Dionysius*, leave it to the SENATE to establish what Form of Government they like best.

Μετα δε τον Αγκυ Μαρκιυ θανατον, η βυλη παλιν, επιβρεψατος αυτη τε δημυ πολιτειαν ην εβλεπετο καταστησασθαι, μενειν επι της αυτης εγγω, και αποδεικνυσι μεσοβασειδεις. D. H. p. 184.

\* In variis voluntatibus, regnari tamen omnes volebant, libertatis dulcedine nondum experta. Liv. L. 1. c. 17.

† —Asylum aperit. Eò ex finitimis populis turba omnis, sine discrimine, liber an servus esset, avida novarum rerum perfugit: idque primum ad coeptam magnitudinem roboris fuit. Liv. L. 1. c. 8.

—Quid enim futurum fuit, si illa pastorum, Convenarumque Plebs transfuga ex suis populis, sub tutela inviolati templi, aut libertatem, aut certe impunitatem adeptæ &c. Liv. L. 2. c. 1.



him in the Administration, was an Indulgence necessary to the Circumstances of ROMULUS, seems to consider those Adventurers, as in a Situation, like what the Romans were in, on the death of Romulus, or on the Expulsion of Tarquin the proud. At those two Periods the Citizens of Rome were a compacted, settled State, feared, at least, if not respected by their neighbours; and were unquestionably free to make what terms they pleased with whomsoever they should chuse for their Governor. But this was far from being the Case of the first Romans: These had need of the Protection, which Romulus, by the Assistance of his Grandfather, was able to grant them; and, (if we may credit the Accounts given of them by Livy and Plutarch) they would naturally be disposed to purchase Protection with a Promise of entire and absolute Obedience. Plutarch represents the Colony from Alba, as consisting of men in a Condition not less distressful than that of the Refugees who fled for Shelter to Romulus's Sanctuary. Vid. supr. p. 26.

That the Dr. forms his Notion of the original and constitutional Powers of the Roman SENATE, and PEOPLE, from their Proceedings with regard to the Election of a King, after the Death of Romulus, is evident from his referring to what Livy relates of those Proceedings. "In one of their first Decrees [the Decrees of the Fathers] it is declared (says the Dr.) that an Election made by the People should be valid; provided, that it was made with the Authority of the Senate." *Decreverunt, ut cum Populus Regem jussisset, id sic ratum esset, si Patres auctores fierent.* These Words of Livy the Dr. cites to prove, that the PEOPLE could not regularly enact any thing, which had not been previously considered and approved by the SENATE; though, by the original Constitution of the Government, the Power of the People, even under the Kings, was supreme and FINAL. But certainly no words were ever more grossly misinterpreted, than those words of Livy are by the Dr. If he had looked four lines forward, he must have seen, that the Historian's Design was to acquaint his Reader, that, in the present Affair (the Election of a new King) the Power of the PEOPLE was NOT FINAL, that the SENATE would not suffer it to be FINAL. The Decree of the Fathers was, That the PEOPLE should be permitted to proceed to the Election of a King; and

and that, provided they pitched upon a Person worthy to succeed Romulus, the SENATE would CONFIRM their Choice \*.

\* Annum intervallum regni fuit. Id ab re, quod nunc quoque tenet nomen, Interregnum appellatum. Fremere deinde Plebs multiplicatam servitutem, centum pro uno dominos factos: nec ultra nisi Regem, et ab ipsis creatum, videbantur passuri. Quum sensissent ea moveri Patres, offerendum ultro rati quod amissuri erant, ita gratiam ineunt, summâ potestate populo permissâ, ut non plus darent juris quàm retinerent. Decreverunt enim, ut, quum Populus Regem jussisset, id sic ratum esset, si Patres auctores fierent: hodièque in legibus Magistratibusque rogandis usurpatur idem jus, vi adempta. Prinsquam Populus Suffragium ineat, in incertum comitiorum eventum Patres auctores fiunt. Tum interrex conclone advocatâ: quod bonum, faustum, felisque sit, inquit, Quirites, Regem create: ita Patribus visum est. Patres deinde, si dignum, qui secundus ab Romulo numeretur, crearitis, AUCTORES FIENT. Adeo id gratum Plebi fuit, ut, ne victi beneficio viderentur, id modò sciscerent juberentque, ut senatus decerneret, qui Romæ regnaret. Liv. L. I. c. 17.

p. 205. "The Roman Constitution, in the great Article of Legislation (says Dr. Taylor, in his admirable Work, called *Elements of the Civil Law*) may not improperly be compared to the Condition of Guardian and Minor in the Roman Law; where the Property of the Freehold, the Dominium, was in the Minor, but no act of his could be good, unless confirmed by the Authority of the Guardian. Thus the Imperium or Majestas was properly in the PEOPLE (looking upon this System of Government as purely DEMOCRATICAL) yet the Auctoritas was as properly in the SENATE."

The Author, in Proof of this, cites the Words of Livy, *decreverunt &c.* and two Passages full to the Point, out of Cicero, *tantis autem consensus &c.* III. Philip. § 5. Nam ita se res habet &c. III. de Leg. § 12. and then adds, "This is the exact Notion of AUCTORITAS among the Romans, not what We mean by Authority, Power or Command, but a Ratification, the Concurrence of those, whose Consent is necessary to make the Acts of others good in Law."

[The Reader will observe, that the Author speaks of the Roman Government, considered as purely democratical; which it not being in the time of the KINGS, what is said cannot be thereto applied.]

p. 207. "—*Usurpare jus vi adempta* is to claim or make a Shew of Right, though we are restrained or denied the proper Execution, and Fruit of it: *solenibus quibusdam peractis, testari jus, etsi uti eo, idque exsequi prohibearis.* [Gronov. I. Ob-serv. 25.] It is usual to claim a Title, without the effective Exercise of it, in order to prevent non-Usage. *Usurpatio* therefore in Livy is what Tacitus calls the Image of Power, whereas *Vis* is the Power itself. *Tiberius vim principatus sibi firmans, imaginem antiquitatis Senatui præbebat.* Tacit. III. Ann. 60.—Again, by *incertum Comitiorum eventum*, in the foregoing Passage of Livy, may possibly be understood, that the Senate would frequently pass a vote in their Council (before they knew which Way the People would vote) that whatever the People should conclude should be esteemed firm and valid."



The Senators had seized the entire Government, held it a Year, and would part with no more of it, than they must: and one purpose of the Historian, in the Passage before us, is to observe to his Readers the great Change, that had been made with regard to those Prerogatives, which were, *at that time, assumed* by the SENATE. The *Fathers* are now (says he) obliged to give the Sanction of their Authority to what the People shall decree, and before it be known what their Decrees will be; whereas, at the time of electing a Successor to Romulus, the Fathers reserved a negative upon the People's Choice; and the People's assembling to chuse a King was preceded by a *Senatus-consultum* authorising them to go upon that Business.

These Prerogatives, I say, were assumed by the SENATE, *at that time*. For, from the Powers exercised by the Roman SENATE and PEOPLE, on occasion of electing a new KING, we are not to infer, that they exercised the like Powers in State-affairs, when that new King was upon the Throne; or that the Exercise of such Powers was (as Dr. Chapman seems to think) *original* and *constitutional*. And this brings us to the third particular. Essay p. 20, 21.

3. It is neither certain nor probable that "Romulus granted the first Citizens of Rome, all the Privileges of a *Democracy*; the Right of making *Laws, War and Peace*; with the choice of all their *Magistrates*." Vid. supr. p. 83.

1. *There is no instance, recorded in History, of a LEGISLATIVE POWER exercised by the PEOPLE, in the time of ROMULUS, or any of the KINGS.*

"Romu-

"\* The Laws (says Dr. Taylor) by which Rome was governed, in its Infancy, were of three Sorts. p. 2.

"1. The Manners and Customs of the first Inhabitants, or of those States, which they left, when they were first incorporated into this new Settlement.

"2. —The arbitrary Edicts or Decrees of their Sovereign, in such Emergencies, where their Customs failed them. p. 5.

"*Et quidem initio Civitatis nostræ, Populus sine lege certa, sine jure certo, primum agere instituit, omniaque Manu a Regibus gubernabantur. Dig. Lib. 1. Tit. 2. Lex 2. §. 1.*

"Where *Lex certa* and *jus certum* is to be understood of a regular System of positive Laws, drawn up by a proper Authority, upon stated Rules and fundamental Maxims.

*Observations on Dr. MIDDLETON's Treatise,*

" Romulus, (says Livy) fortified the Palatine Hill, where he  
 " had been educated. He offered Sacrifices to some Gods, ac-  
 " cording to the *Alban* Ritual; to Hercules, according to the  
 " *Greek*:—Divine Worship being duly performed, and the mul-  
 " titude summoned to assemble, *he prescribed them LAWS, Jura*  
 " *dedit*;" which is the Expression used by *Tacitus*, in speaking  
 of the *Legislation* of *Augustus*, when he was most absolute \*.

The

" It remains to enquire what is meant by *Manus*. [*Manus* is generally taken  
 " for Power or Authority, for an absolute, despotic, and unlimited Controul.—  
 " To bring home the Word, and to our Purpose, *Manus*, when applied to  
 " Government, is that arbitrary Kind of Administration, which depends rather  
 " upon the Will of one, than the Consent of many.—

" 3. — Such Laws, as were enacted by general Consent, and the public  
 " Authority of the State or People collectively.

" *Postea aucta ad aliquem modum Civitate, ipsum Romulum traditur Populum in*  
 " *xxx Partes divisisse, quas Partes Curias appellavit.—Et ita leges quasdam et ipse*  
 " *curiatus ad Populum tulit. Tulerunt et sequentes Reges. D. 1. 2. 2. 2.*

[That in the Times of some of the Kings there were Laws enacted by general  
 Consent, it may be rash to deny; yet it would seem, that to the enacting of  
 Laws a general Consent, *declared in Comitia*, was not necessary, during the Regal  
 State; and that the King was free, on occasion of any new Law proposed, to  
 take the Suffrages of the People upon it, or not, as he pleased. According to  
 D. H. p. 87. Dionysius, the People's Privilege of giving their votes, in the passing of Laws,  
 was only *Όταν δ βασιλευς εφη.*]

Elem. &c. p. 8. " After the Expulsion of the Kings A. U. C. 244. the City was governed  
 " for about the Space of 60 Years, as formerly, incerto magis jure quam per la-  
 " tam legem. (D. 1. 2. 2. 3.) The *Leges Regiæ* lost their Authority, but the

D. H. V. 2. " *δημοκρατίας ειναι δοκῶντας—ανελεύσαντο*, i. e. *Consules*. [*Leges, quæ humanæ et*  
 " *populares videbantur, revocarunt*] and where they did not reach, the Consuls,  
 " who were Kings in all but Name and Duration, supplied the Defect, like  
 " Romulus, with their own Edicts and Decisions."

\* *Cæsar Augustus potentia securus, quæ Triumviratu jusserat, abole-  
 vit; deditque Jura, quis Pace et Principe uteremur. Tacit. Ann. Lib. 3. c.*  
 28.

Essay, p. 21. Dr. Chapman says, " It must be owned, that the Words *jura dedit* [in Livy]  
 " are very strong, and seem, at first Sight, to imply a legislative Power in *Ro-*  
 " *mulus*; but then, how is this to be reconciled with some other Expressions in  
 " the same Sentence? [*Rebus Divinis ritè perpetratis, vocataque ad concilium mul-*  
 " *titudine, quæ coalescere in populi unius corpus nulla re præterquam legibus pote-*  
 " *rat, Jura dedit.*] If Romulus prescribed *Laws* by his own Authority, why  
 " were the People assembled in *Comitia*, as if they were to ratify them by their  
 " Suffrages; at least, what Occasion for having the *Comitia* preceded by the  
 " most solemn Acts of Religion? For *Concilium* signifies a regular Assembly of



The same Historian tells us, that "ROMULUS governed the Romans according to his sovereign Will and Pleasure: [nobis Romulus ad libitum imperitaverat:] that NUMA kept the People within Bounds by the means of religious Rites and Ceremonies, which he instituted, and in the Institution of which he had the Skill to persuade his Subjects, that he acted by divine Commission: that some useful Regulations were hit upon by TULLUS and ANCUS: but that it was peculiar to SERVIUS TULLIUS to be the Ordainer of LAWS, which even the

the People, as appears from several parallel Places of the same Author; and *rebus divinis ritibus perpetratis*, plainly imply those Acts of Religion, which always preceded the *Comitia Curiata*, which were the only *Comitia* in being at this time. It is well known, that Assemblies of the People, unless called for the Election of Magistrates, or the enacting of Laws by Suffrage, had no such previous Solemnities; And therefore as the People were assembled upon this Occasion, with the same Formality, as when they were really to give their Suffrages, there is reason to presume they did give them, and that *Jura dedit*, like *Leges tulit* is to be understood of proposing or bringing in Laws, and not of enacting them by his own Authority."

To this it may be answered,

1. That though *Concilium* sometimes signifies *Comitia*, or a regular Assembly, it has not always that Signification; and, in the present instance, Livy could not, by that word, mean *Comitia Curiata*, because, by his Account, the Division of the People into *Curie* was not yet made.

2. That the Acts of Religion, mentioned in the Passage before us, seem not to have any Relation to the *Concilium*, or to Law-making, but to the King's laying the Foundation of Rome, or, which is the same Thing, his beginning to fortify Mount Palatine. Religious Solemnities were usual on such Occasions; and both Dionysius and Plutarch speak amply of Solemnities performed by Romulus when he founded his new City; and this helps to fix with Certainty the Intention of Livy in what he says of Sacrifices offered by the King at this time: *Palatinum primum, in quo ipse erat educatus, munivit: Sacra Diis aliis, Albano ritu; Græco, Herculi, ut ab Evandro instituta erant, facit*. Then follows immediately a Digression, containing the fabulous Stories of Hercules, and Geryon, and Cacus, and Evander, which last (the Historian tells us) was the first Instructor of that religious Worship which Romulus now paid to Hercules. And this Worship (adds Livy) was the only foreign religious Rite adopted by Romulus. And then he continues the Thread of his main Story.—*Rebus divinis ritibus perpetratis, vocatque ad Concilium multitudinem—jura dedit*: By which Words it is plain,

3. That the Sacrifices, mentioned, were performed, before the King called the People together; whereas the religious Solemnities, previous to the enacting of Laws by Suffrage, were not performed till after the Voters were summoned.

"Kings.

*Observations on Dr. MIDDLETON's Treatise,*

"Kings of Rome were to obey \*." Ryckius, in his Note on the Words *ad libitum imperitaverat* †, is very positive (by reason of the Context, and Dionysius's Account of the Regal Prerogatives) that Tacitus did not mean to say, that Romulus was an *absolute* Prince; but that he was the sole Administrator of Justice between Man and Man, the State being, at its Commencement, without LAWS. Now should we grant, that the Words, considered with the Context, do not *necessarily* import the *absolute* Power of the King, with regard to State Affairs; yet it cannot be said, that they may not imply such *absolute* Power, or that Tacitus did not employ them in that comprehensive Sense. And it is observable, that Livy makes use of the Verb *imperitare* to express the Domination of the SENATE, when, (after the Death of Romulus) assuming the whole Management of the State, *summum rerum*, they lorded it over the COMMONS; and the COMMONS found themselves in *Servitude* to a hundred Masters, instead of ONE ‡.

And supposing, that Tacitus meant to say no more, than that, in the Days of Romulus, the Romans had no fixed Laws, whereby private Causes were to be determined, and that the KING, being sole Judge, decided them according to his own Reason, and Will; I say, supposing Tacitus to mean no more than this, yet this was surely incompatible with those Privileges of a Democracy, which Dr. Middleton supposes to have been granted by Romulus to the PEOPLE.

\* Quidam [populi] statim, aut postquam regum pertæsum, leges maluerunt—Nobis Romulus *ad libitum imperitaverat*: dein Numa religionibus & divino jure populum devinxit; repertaque quædam a Tullo & Anco: sed præcipuus Servius Tullius Sanctor legum fuit, quis etiam reges obtemperarent. Tacit. Ann. L. 3. c. 26.

† Si verba hæc simpliciter & extra contextum accipiuntur, sine respectu ad præcedentia, vel consequentia, illis significatur, Romulum ex animi sui Sententiâ Potestatem exercuisse, sive Regem fuisse absolutum.—Intelligendus hic locus tantum de Jure, quod Romulus reddidit privatis, non de aliis Majestatis Juribus. Illud autem in civitate Legibus destituta plane penes Romulum, ipsiusque arbitrium pro Legibus erat, omniaque Manu a Regibus gubernabantur, ut Pomponius L. 2. § 1. D. de O. I.

‡ Rem inter se centum Patres, decem Decuriis factis, singulisque in singulas Decurias creatis, qui summæ rerum præessent consociant: unus cum insignibus Imperii, & Licioribus erat.—annuumque intervallum regni fuit.—Fremere deinde Plebs, multiplicatam Servitutem, centum pro uno Dominos factos. Liv. L. 1. c. 26.

That



That the **KINGS** of Rome had the **Prerogative** of deciding, *without Appeal*, in **ALL** Causes **CIVIL** and **CRIMINAL**, till *Servius Tullius* relinquished the Cognizance of *private* Causes to the Senate, is expressly affirmed by *Dionysius*: who likewise tells us, that when *Servius* constituted the *Senators* Judges in private Causes, he prescribed to them the **LAWs**, by which they were to govern themselves in their Decisions\*.

With regard to the **Right of Appeal**, in capital Causes, from the **KING** to the **PEOPLE**, some Writers (among whom, perhaps, we may reckon *Cicero* †) seem to have built too much on the Story, of *Horatius's Appeal* to the **PEOPLE**, from the Sentence of the *Duumvirs*, whom *Tullus Hostilius* had commissioned to try him. *Livy* intimates, that *Horatius* made his Appeal, by the *King's Authority or Advice* ‡; and *Dionysius* says expressly, that the **KING**, “perplexed with strong Objections both against acquitting, and against condemning the accused, to get rid of the Difficulty, referred the Cause to the **PEOPLE**”; and the *Historian* adds, that this was the *first Instance* [he might probably “with Truth have said, and the **LAST** during the *Regal State*] “of the **PEOPLE's** being Judge in a capital Cause §;” from whence one may with good Appearance of Reason conclude, that an *Appeal* to the *People* from the *King*, in such Causes, was not, by *Law*, original and constitutional ||. And it would seem by the Story \*\* itself, as it is in *Livy*, that the *King*, if he

\* Των γὰρ πρὸ αὐτῆ βασιλείων ἀπάσας ἀξιούτων ἐφ' ἑαυτὸς ἀγειν τὰς δίκας, καὶ πάντα τα ἐγκληματὰ τα τε ἰδία καὶ τα κοῖνα πρὸς τὸν ἑαυτῶν τρόπον δικάζουσαν, ἐκεῖνος διελάων ἀπὸ τῶν ἰδιωτικῶν τα δημοσίων, τῶν μὲν εἰς τὸ κοινὸν φερομένων ἀδικημάτων αὐτὸς ἐποιεῖτο τὰς διαγνώσεις, τῶν τε ἰδιωτικῶν ἰδιώτας σταξεν εἶναι δικάσας, ὅρους αὐτοῖς καὶ κἀνομὰς τάξας ὡς αὐτὸς ἐγράφε νόμους. D. Hal. p. 228, 229.

† Vid. sup. p. 84. the Note.

‡ Tum *Horatius*, *Auctor* *Tullo*,—*Provoco*, inquit.

§ συγχων δὲ λόγων ρηθέντων ὑφ' ἑκατέρων, πολλὴν τὸν βασιλεὺς κατέχευεν ἀμηχανία, τι τέλος ἐξεργάσθαι περὶ τῆς δίκης.—ἀπορρήμενος δὲ [ὁ βασιλεὺς] τι χρῆσται τοῖς πράγμασι, τελευτῶν κρατίζον εἶναι διγνῶ τῷ δήμῳ τὴν διαγνώσιν ἐπιτρέπειν. γενομένου δὲ θανάτου κριτῶς τότε πρῶτον ὁ Ῥωμαίων δῆμος κύριος, τῇ γνώμῃ τε παλῶς προτεβέλο, καὶ ἀπολμῇ φονῆς τὸν ἄνδρα. D. Hal. p. 159.

|| Had there been any other Instance, during the *regal State*, of an Appeal to the *People*, in a capital Cause, we may presume, that *Livy* would have furnished the elder *Fabius* with it.

\*\* [*Horatius*] *raptus in Jus ad Regem*. *REX*, ne ipse tam tristis ingratiq; ad vulgus iudicii, aut secundum Iudicium, supplicii *AUCTOR* ESSET; concilio po-

he had pleased, might have determined the Cause *finally*: That, though there was a *Law* [probably ordained by Numa] which allowed a Person condemned to Death, by the King's Judges, as a Murderer, to appeal from the Sentence of those Judges to the PEOPLE, that Law gave no right of Appeal, where a criminal was condemned by the King himself.

As a farther Proof, that by *Law* there lay no Appeal from the King in capital Causes, we may urge what Livy makes Fabius, the Father, say to the Dictator Papirius, who was going to sentence Fabius, the Son, to Death, for a Breach of military Discipline. The Elder Fabius, having called upon the Tribunes for Aid, and appealed to the PEOPLE, concludes with these Words (addressing himself to the Dictator) *We shall see, whether you will give Place to AN APPEAL, to which Tullus Hostilius, a ROMAN KING, did not refuse to yield* \*. These Words would have no force, if the Power of a King were not supposed to be, at least, equal to that of a Dictator. Now Livy informs us, that by the Law for creating a Dictator, there lay no Appeal † from this Magistrate: and though Papirius does not dispute the superior Power of *the Roman People*, in Case the Tribunes are resolved to take the Cause out of his Hands; yet he declares, that he will not give his Consent to it, and that, if they receive the Criminal's Appeal, they will do an illegal and pernicious Act of Power, and annihilate the just Prerogatives of the Dictatorship ‡. And it is worthy to be remarked,

populi advocato, *Duumviros*, inquit, qui Horatio *perduellionem* judicet secundum *Legem facio*. Liv. L. 1. c. 26.

\* Tribunos Plebis appello, provoco ad Populum; eumque tibi—judicem fero, qui certe unus plus quam tua Dictatura potest polletque. Videro cessurusne provocationi sis, cui Rex Romanus Tullus Hostilius cessit. L. 8. c. 33.

† Consulares legere: ita Lex jubebat de Dictatore creando lata — *Creato Dictatore* primum Romæ, postquam præferri secures viderunt, magnus Plebem metus incessit, ut intentiores essent ad dicto parendum. Neque enim ut in Consulibus, qui pari Potestate essent, alterius auxilium, neque Provocatio erat, neque ullum usquam nisi in Cura parendi auxilium. Liv. L. 2. c. 18.

‡ Majestas imperii perpetuane esset, non esse in sua Potestate: L. Papirium nihil de ejus jure deminuturum. Optare, ne Potestas tribunitia, inviolata ipsa, violet intercessione sua Romanum Imperium, neu Populus Romanus in se potissimum Dictatorem, et Jus Dictaturæ extinguat.—



ed, that though the Senate, the Commons, the Tribunes, the Army were all on the Side of Fabius, the Roman People would not violate the *absolute Sovereignty* of the Dictator by receiving the Appeal, and deciding the Cause judicially. Yet doubtless they would have heard and determined the Cause in *Comitia*, if the Dictator had referred it to them, as King Tullus did the Cause of Horatius.

It must be confessed, that Papirius, when, in the Camp, he calls upon Fabius, General of the Horse, to answer for his disobedience to Orders, begins his Harangue with some Words, which seem to import, that the Power of a Dictator was greater than the Power which the Roman Kings had possessed. He reminds Fabius, that the Consuls paid Obedience to the Dictator, and he stiles the Consuls *Regia Potestas*: *Quæro, inquit, de te, Q. Fabi, quum summum Imperium Dictatoris sit, pareantque ei Consules, REGIA POTESTAS, Prætores, iisdem auspiciis, quibus Consules, creati, æquum censeas, necne, magistrum equitum dicto audientem esse?* But it should be considered, that Livy, in this Cause, is counsel on both sides, and, of Course, says the best he can for his Clients. And though, in the Passage before us, he makes Papirius attribute *regal Power* to the Consuls, and, in his Account of the Rise of the *Free State*, tells us, "that the Beginning of that Freedom consisted rather in L. 2. c. 1.  
" this, that the CONSULAR Authority was confined to a  
" Year, than that it was in any Degree less than the RE-  
" GAL; the FIRST Consuls having all the Prerogatives and  
" all the Ensigns of Power, which had belonged to the KINGS;" yet we ought to observe that he speaks only of the FIRST Consuls, [*Omnia Jura PRIMI Consules tenuere.*] Strictly speaking, Valerius was not one of the FIRST Consuls; and it was he, who, when alone he held the Fasces, after the Death of Brutus, lowered and submitted those Ensigns of his Magistracy, on his Entrance into L. 2. c. 7, 8.

Stupentes Tribunos, et suam jam vicem magis anxios, quam ejus cui auxilium ab se petebatur, liberavit onere consensus populi Romani ad Preces et Obtestationem versus, ut sibi Poenam Magistræ Equitum Dictator remitteret. Tum Dictator silentio facto, " Bene habet, inquit, Quirites. Vicit Disciplina  
" militaris; vicit imperii Majestas, quæ in discrimine fuerunt, an ulla post hanc  
" Diem essent. Liv. L. 8. c. 34, 35.

the *Assembly of the PEOPLE*; thereby to make an Acknowledgment, that the Majesty and Power of the PEOPLE were superior to those of the CONSUL. And the Occasion of this was a strong Suspicion, entertained by the Multitude, of his aiming at *Royalty*; because he had not substituted a Collegue to himself in the Place of *Brutus*, and because he was preparing to *build* upon the Summit of Mount Palatine: for they feared, that he meant to erect there a Fortrefs, which, by its Situation, would be impregnable. And it was to clear himself effectually from this Suspicion, that *Valerius*, not only removed the Materials of his intended Building to a lower Ground, and *submitted the Fasces*, as has been said, but likewise passed, at the same time, that famous LAW, whereby, in criminal Causes, every Citizen had the Privilege of *appealing* to the PEOPLE from the Sentence of the Magistrates; a Law so pleasing to the Multitude that it acquired to its Author the Surname of POPLICOLA [or *popular*.] How could the Consul's passing this *Law*, or his *lowering the Fasces* in the Assemblies of the PEOPLE, have convinced them, that he did not aim at *regal Power*, if the KINGS had recognized the Superiority of the PEOPLE, and a Right in them, to reverse the Royal Judgments and Decrees?

Liv. L. 2. c.  
8.

I have said, that, *strictly speaking*, *Valerius* was not one of the FIRST Consuls: these were *Brutus* and *Collatinus*. But as the *Valerian Law* seems to have been little regarded, till the Erection of the *Tribuneship*, it is probable, that, by the FIRST Consuls, LIVY meant ALL the Consuls between the *Regifuge* and the Creation of the *first Tribunes*. And this is the more probable, as CICERO makes that *Creation* the *Epoch*, from whence he dates the beginning of the ROMAN FREE STATE \*.

And

\* Quæsitum ab illis est, placeret ne unum in civitate esse magistratum, cui reliqui parerent: quod exactis Regibus intelligo placuisse nostris majoribus. Sed quoniam regale civitatis genus, probatum quondam, postea non tam regni, quam Regis vitiiis, repudiatum est, nomen tantum videbitur Regis repudiatum, res manebit, si unus omnibus reliquis magistratibus imperabit. Quare nec Ephori Lacedæmone sine causa à Thepompo oppositi Regibus, nec apud nos Consulibus Tribuni. Nam illud quidem ipsum, quod in jure positum est, habet Consul, ut ei reliqui magistratus omnes pareant, excepto Tribuno, qui post exstitit, ne id, quod fuerat esset: hoc enim primum minuit consulare jus, quod exstitit ipse qui eo non



And from all these Considerations may we not fairly collect, that the Subject had not, by any established Law or Custom, the Privilege of APPEAL, even from the King's Judges, but when the Kings were pleased to direct or permit such Appeal?

AND, with regard to what concerned the STATE, though Livy tells us, that "Tarquin the Proud, was the first of the Roman Kings, who broke the CUSTOM of consulting the Senate upon ALL Affairs," his meaning can be only, that Tarquin was the first, who TOTALLY \* laid aside the custom of consulting the Fathers: Otherwise we must say, that the Historian is in-

teneretur: deinde quod attulit auxilium reliquis non modo magistratibus, sed etiam privatis, consuli non parentibus. [Dr. Middleton (I know not upon what Authority) instead of the Words in *Italic*, reads, —res manebat, cum unus omnibus magistratibus imperaret. Treatise p. 37.]

Livy seems likewise to date, not indeed the Commencement of Freedom in the State, but the Commencement of the Free State from the same Æra. For, though (after relating in his first Book, the Expulsion of Tarquin the Proud) he begins his second Book, with saying, that he shall henceforward write of the Roman People Free, annual Magistrates, and the Empire of Laws superior to private Will. LIBERI jam hinc POPULI ROMANI res pace belloque gestas, ANNUOS Magistratus, IMPERIAQUE LEGUM POTENTIORA quam HOMINUM peragam: Yet, in the Close of this Introduction, he adds a corrective, (as we have before observed) importing, that the public Liberty, in its Origin, consisted chiefly in this, that the Consular Power, in all other Respects, equal, at first, to the regal Power, was but annual, not perpetual, like that of the Kings. LIBERTATIS autem ORIGINEM inde magis, quia annuum Imperium consulare factum est, quam quod dominum quicquam sit ex regia Potestate numeres. Omnia Jura, omnia insignia PRIMI Consules tenuere. And by what the Historian says a few Lines before, he intimates, that compleat Liberty and the Tribuneship had their beginning at the same time. Brutus, says he, who acquired so much Glory, by expelling Tarquin the Proud, would have been the Author of much Mischief to the State, if through an untimely Desire of LIBERTY, he had wrested the Kingdom from any of the former Kings. For what would have been the Consequence if those fugitives from their own Countries, who found, at Rome, if not Liberty, a shelter at least from Impunity—if they being set free from the dread of MAJESTY had begun to be ruffled and agitated by TRIBUNICIAN Storms? Neque ambigitur quin Brutus idem, qui tantum Gloriæ, superbo exacto Rege, meruit, pessimo publico id facturus esset, si libertatis immaturæ cupidine, priorum Regum alicui regnum extorsisset. Quid enim futurum fuit, si illa Pastorum, Convenarumque Plebs transfugæ ex suis Populis, sub tutela inviolati templi, aut libertatem, aut certè impunitatem adepta, soluta regio metu, agitari coepta est Tribuniciis procellis?

\* Statuit nullos in patres legere, quo contemptior paucitate ipsa ordo esset, minusque per se NIHIL agi, indignarentur: Hic enim Regum primus traditum a primoribus MOREM de omnibus Senatam consulendi solvit. Liv. L. i. c. 48.

consistent with himself: for, by his own Account, *Servius Tullius* did very important Acts of a public Concern, without consulting the *Senate*, and even against their Will. In the latter end of his Reign, having never been elected, in *Form*, to the Throne by the *PEOPLE*, and fearing to be dispossessed, through the Intrigues of *Tarquin*, (who objected to him his want of such formal Election) "he first secured the good Will of the *COMMONS*, by distributing among them the conquered Lands; and then, holding an Assembly of the *PEOPLE*, asked them, whether they willed and ordained that he should reign. Never was any of his Predecessors so unanimously declared King \*." Now it is very plain, that he took both these Steps, without consulting the *Fathers*; and that he continued to hold the Government without their Confirmation of his Election by the *PEOPLE*: and indeed, according to *Dionysius*, he made no † account of the *Auctoritas Patrum*, after he had been declared King *Jussu Populi*.

And yet *LIVY* (after relating how *Servius* was murdered) characterises him as an excellent King, "who reigned 44 Years in such a manner, that even a worthy Successor would have found it difficult to emulate him:" he adds, "and what heightened the Glory of *Servius* was, that with him ended *justa ac legitima regna*," literally, *just and legitimate reigns* ‡.

The exact and full meaning of these last Words I will not pretend to fix. They may possibly have no Relation to *Servius's Title to the Crown*, but only to his *just and mild Administration*: yet one may reasonably believe, they relate to both, if we consider, that the Historian, a few Lines after (as if he intended a Contrast between *Servius* and his Successor) speaks of the *unjust*

\* *Servius* quanquam jam usu haud dubie regnum possederat, tamen quia interdum jactari voces a juvene *Tarquinio* audiebat, se injussu *Populi* regnare, conciliatâ prius voluntate *Plebis* agro capto viritim diviso ausus est ferre ad populum vellent, juberentne se regnare? Tantoque consensu haud quicquam alius antè, rex est declaratus. *Liv. L. i. c. 46.*

† *Ἀπαναίς δὲ τὰι φρατραῖς κριθεὶς τῆς βασιλείας ἀξίος χαλεπὴν τῇ βουλῇ φράσας ἢ ἐκκλῆσαι ἐπικυρώσαι τὰ τῷ δημοτικῷ πλεθρῷ ὥσπερ αὐτὴ ποιεῖν ἔθος, κατέσχευε τὴν ἀρχήν.* *D. H. p. 218.*

‡ *Servius Tullius* REGNAVIT annos quatuor et quadraginta, ita ut bono etiam moderatoque succedenti REGI difficilis æmulatio esset. Ceterum id quoque ad gloriam accessit, quod eum illo simul *justa ac legitima Regna* occiderunt. *Liv. L. i. c. 48.*



means by which Tarquin acquired the Kingdom \*, as well as of the unjust Use be made of his Power. Whatever was Livy's own Sentiment, he plainly intimates, by his History of Servius Tullius, that, notwithstanding the Creation of four Kings (since the Death of Romulus) *jussu Populi, Patribus Auctoribus*, the Senate did not think, that a formal Election by the Curiae was necessary to give a man a rightful Title to the Throne; nor the PEOPLE think, that the Authority of the Fathers was necessary to such Title, or that even an Election, in Form, by themselves was needful.

By Agreement between the Senate and Commons, after the Decease of Romulus, and a Year of Aristocratical Government, the PEOPLE were to choose a King, and the Election was to be valid, provided the SENATE confirmed it. *Jussus Populi* and *Auctoritas Patrum* were to concur in the Creation of a Successor to Romulus. But there was no LAW then subsisting, that prescribed this Method of creating a King; nor did they at that time make any Law, that prescribed it, for the future. It is probable that they did not dream of any future Election of a King.

Vid. supr.  
P. 92, 93-

Nor does either *Jussus Populi* or *Auctoritas Patrum* seem to have been originally necessary to any public Act while a KING was upon the Throne; though it appears, that in the time of Ancus Marcius it was become a Custom for the King to take the Advice of the Senate concerning War and Peace, and to govern himself by the Opinion of the Majority. Servius's Title to the Crown was of the same † kind with that of Romulus; and, like him, he prescribed Laws to the Romans, *jura dedit*.

It would seem, by LIVY's Account, that this sixth King of Rome, by his sole Authority, changed the very Constitution of the

\* Inde L. Tarquinius regnare occorpiit—Conscius deinde malè quærendi regni ab seipso adversus se exemplum capi posse, ARMATIS Corpus circumsepit. Neque enim ad Jus regni quicquam præter VIM habebat, ut qui neque populi jussu, neque auctoribus Patribus regnaret. Liv. L. I. c. 49.

† Romulus was King before there were either Senators or Curiae. Some will perhaps think, that there was a considerable Difference betwixt the Titles of the two Kings; because the first had the Approbation of the BIRDS, which the other never asked: But we do not find that the Romans considered this as an essential Defect. In eo bello, et Virtus et Fortuna enituit Tullii, fusoque ingenti hostium exercitu, haud dubius Rex, seu Patrum, seu Plebis animos periclitaretur, Romam rediit. Liv. L. I. c. 42.

Vid. supra p.  
103.

D. H. p. 229,  
239.

Government. According to *Dionysius* (as we have before observed) *Servius* transferred a part of the regal Prerogative to the Senators, appointing them to be Judges in civil Causes, and in such criminal Causes as did not affect the State. And, according to both the Greek and the Latin Historian, the same King transferred all the Powers of the *Comitia Curiata* to *Comitia Centuriata*; which was, in reality, transferring to the *Minority* of the Citizens what had ever belonged to the *Majority*. And it does not appear, that he acted with the concurrent *Authority*, or even took the *Advice* of either *Senate* or *People*, in making this Change. Both submitted tacitly to it, because both saw or thought they saw, in it, their own Advantage. At least, this is intimated by the Historians, And it is worthy to be remarked, that the *Validity* of this *Act* was never questioned, though *SERVIVS* was, at that time, a King *de facto* only, and held not the Crown *jussu Populi*. Indeed he never was a King *de jure*, if *Auctoritas Patrum* was necessary to make him so.

Treat. p. 33.

Dr. Middleton says, that "when *Servius Tullius* contrived to "reduce the Authority of the poorer Sort, it was to advance that "of the Rich, and to change only the Hands, not the Power of "his Masters." Now, if I understand these five Words, the Hands of his Masters, they mean neither more nor less than these two Words, his Masters; and what the Dr. says is, that *SERVIVS* contrived ONLY to change his Masters; that is, ONLY to change the Constitution essentially, by giving to the Few, the SUPREME POWER\*; which, till then, had (according to the Dr.) belonged to the many.

## 2. THERE

\* Mr. Moyle, in writing of the original Constitution of the Roman Government, does not give to the PEOPLE that SUPREME POWER which is attributed to them by the Dr.: and yet, like the Dr, he builds on the Authority of *Dionysius*. "Though he [*Romulus*,] says Mr. Moyle, shared the Legislative in common "with the People and Senate, and had no Power to pass any Law without the "Concurrence of both Orders, yet he had the sole right of proposing to the PEOPLE in their Assemblies, by virtue of his Prerogative, which amounted to a "full negative Voice in all their Determinations: neither the People nor Senate "having the liberty of proposing, debating, or enacting Laws, till they were first "moved from the Throne. Besides this advantage of having the LARGEST "SHARE of the legislative Power, he had ALL the executive Power lodged in "his Hands. He had the supreme Power of Administration of Justice, in all "Causes



2. THERE is no instance recorded of the PEOPLE's exercising any Share of Power, during the regal State, in declaring War or in making Treaties of Peace.

"We shall perhaps think it strange (says M. Vertot) that in a State, governed by a King, with a Senate to assist him, the Laws, the Ordinances, and the Result of all Deliberations should be constantly made in the Name of the PEOPLE, without any mention of the Prince at the Helm. But we ought to remember that *this magnanimous People had reserved to themselves the larger Share of the Government. No RESOLUTION for WAR or PEACE was taken but in their Assemblies; which at that time were called Assemblies of the Curia, because they consisted only of the Inhabitants of Rome, divided into 30 Curia*" [Parishes or Wards.] &c \*.

That which, M. Vertot here says, we ought to remember, is, to my Apprehension, not an historical Truth, but a mere Fiction. And I think it appears to be so, by the very ceremonial Process (described in the 32d Chapter of Livy's first Book) from which (if I mistake not) the ingenious Abbé has gathered, that Declarations of War were made in the Name of the PEOPLE without any mention of the King. In that Ceremonial, which was instituted by King Ancus Marcius to be observed in demanding Satisfaction for Injuries sustained, and in declaring War, † no mention

*Causes civil and criminal, unless in those of little Consideration, which he referred to the Senate; but in all others he was sovereign Judge in the last Resort, without any farther Appeal to the PEOPLE: and in time of war he had the absolute Command of all the Forces of the State.* D. H. p. 65, 66." Moyle's Works, Vol. I. p. 8, 9.

\* In these Assemblies (adds M. Vertot) "they chose their Kings, their Magistrates, and their Priests, made Laws, and administered Justice." This last particular has no Shadow of Authority to countenance it. Dionysius, who is Voucher for the PEOPLE's having the other Privileges mentioned, never attributes to them the Administration of Justice.

† Ut—quoniam Numa in Pace Religionem instituit, à se bellicæ ceremoniæ proderentur; nec gererentur solum, sed etiam indicerentur bella aliquo ritu; jus ab antiquâ gente Æquiculis, quod nunc Feciales habent, descripsit, quo res repetuntur. Legatus ubi ad fines eorum venit, unde res repetuntur, capite velato—*Audi Jupiter*, inquit, *audite Fines* (cujuscunque gentis sunt, nominat) *audiat fas. Ego sum publicus nuncius Populi Romani: justè pièque legatus venio, verisque meis fides sit.* Peragit deinde postulata. Inde Jovem testem facit: *si ego injustè*

tion is made of the King by the Herald [the *Fecialis*:] This must be granted: But how strange soever this may appear, there is another thing, perhaps not less strange, which the Abbé has overlooked, (as have likewise the two Doctors;) namely, That, though it was customary to demand Satisfaction in the name of the PEOPLE, and, on refusal, to declare War in their Name, and as by their Authority and Command, yet (by the ceremonial Process, described) these Things were done, without so much as consulting the PEOPLE thereupon.

When the Herald, who has been sent to demand Satisfaction is returned to the City, he reports to the King and Senate the answer he has received. If it be a Refusal, the King asks the Senators, one by one, their opinion concerning the Measures to be taken. If the Majority are for War, a Declaration of War immediately follows. There is no Reference of the matter to the PEOPLE.

*injuste impieque illos homines, illasque res dedier nuncio Populi Romani mihi exposco, tum patriae compotem me nunquam finas esse.* Hæc, quum fines suprascan- dit, hæc, quicumque ei primus vir obvi- us fuerit; hæc, forum ingressus, paucis verbis carminis, concipiendique jurisjurandi mutatis, peragit. Si non duntur quos exposcit, diebus tribus et triginta (tot enim solennes sunt) peractis, bellum ita indicit: *Audi Jupiter, & tu Juno, Quirine, diique omnes caelestes, vosque terrestres, vosque inferni audite. Ego vos testor, populum illum, (quicumque est nominat) injustum esse, neque jus persolvere. Sed de istis rebus in patria majores natu consulamus, quo pacto jus nostrum adipiscamur.* Cum his nuncius Romam ad consulendum redit. Confestim Rex his ferme verbis Patres consulebat: *Quarum rerum, litium, causarum condixit Pater Patratus Populi Romani Quiritium patri patrato Priscorum Latinorum, hominibusque priscis Latinis, quas res dari, fieri, solvi oportuit, quas res nec dederunt, nec fecerunt, nec solverunt, dic, inquit ei quem primum sententiam rogabat, quid censet?* Tum ille: *Puro pioque duello querendas censeo; itaque consentio, consciscoque.* Inde ordine alii rogabantur: quandoque pars major eorum qui aderant, in eandem sententiam ibat, bellum erat consensum. Fieri solitum, ut fecialis hastam ferratam, aut sanguineam præultam ad fines eorum ferret, et non minus tribus puberibus diceret: *Quod Populi priscorum Latinorum, hominesque prisci Latini adversus Populum Romanum Quiritium fecerunt, deliquerunt, quod Populus Romanus Quiritium bellum cum priscis Latinis iussit esse, Senatusque Populi Romani Quiritium censuit, consensit, conscivit, ut bellum cum priscis Latinis fieret; ob eam rem ego populusque Romanus populis priscorum Latinorum, hominibusque priscis Latinis, bellum indico facioque.* Id ubi dixisset, hastam in fines eorum emittebat. Hoc tum modo ab Latinis repetitæ res, ac bellum indictum: moremque cum posterius acceperunt. Liv. L. 1. c. 32.

Even



Even in the *Free State*, (which, according to CICERO, as we have before observed, commenced with the *Tribunes of the Commons*) "the Consuls, or the Senate (as the celebrated Author of "the *Treatise de l'Esprit des Loix* has remarked) frequently made "War, notwithstanding the Opposition of the Tribunes \*." It seems not therefore in any degree probable, that, under the Kings, no Resolutions for WAR were taken but in the Assemblies of the PEOPLE.

AND as to *Treaties of PEACE*, Livy tells us, that the oldest Treaty on Record was that between the Romans and Albans in the time of King Tullus Hostilius; and the Historian gives us the Form of it; adding, that the same Form was observed in all other Treaties. And he likewise gives us the ceremonial †, whereby the *Fecialis* was empowered to make that Treaty; by which ceremonial it would seem, that the KING was principal in the Transaction. It is in Behalf of the ROMAN PEOPLE, that the Herald, by Commission from the KING, concludes the Treaty: but the Historian says not a word of the KING's giving that Commission to the Herald in Consequence ‡ of a Decree of

\* Bien loin que le peuple fut l'arbitre de la Guerre, nous voyons que les Consuls, ou le Senat la faisoient souvent, malgré l'opposition de ses Tribuns. Vol. I. p. 175.

† *Fœdera alia aliis legibus, ceterum eodem modo omnia fiunt. Tum ita factum accepimus, nec ullius vetustior fœderis memoria est. Fecialis Regem Tullum ita rogavit: Jubesne me, Rex, cum Patre patrato populi Albani fœdus ferire? Jubente Rege, Sagmina, inquit, te, Rex, posco. Rex ait, Puram tollito. Fecialis ex arce Graminis herbam puram attulit. Postea Regem ita rogavit. Rex, facisne me tu REGIUM NUNCIMUM Populi Romani Quiritium? Vasa comitesque meos? Rex respondit: Quod sine fraude mea Populi Romani Quiritium fiat, facio. Lib. I. c. 24.* So, in the Surrendry of *Collatia* to *Tarquinius Priscus*, the King says to the *Collatine* Deputies: *Deditione vos, Populumque Collatinum—in meam Populi Romani Ditionem?* they answer *Dedimus*. The King replies—*At ego recipio. L. I. c. 38.*

‡ By the Relation which *Dionysius* gives of the first Rupture between Rome and Alba, King Tullus declares War against the Albans, before he can possibly have an Opportunity of asking the Consent of the *Curia*. D. H. p. 139. And when *Fufetius* (who, on the Death of the Alban King, was chosen General to carry on the War) has, in the Field, proposed to have the Dispute decided by a Combat between the *Horatii* and *Curiatii*, Tullus returns to the City and consults with the principal Citizens [*αὐτὰ τοῖς ἀριστοῖς*] probably the Senators, and when the Majority of these have declared their Approbation of the Proposal,

the CURIÆ ASSEMBLED; nor is the Treaty referred to the *Comitia* for Ratification.

The PEOPLE had probably, with regard to PEACE, a Privilege, like to that, which Dionysius tells us, was granted to them by Romulus, with regard to WAR: They were to *deliberate, and decree concerning it, as often as the King gave them Permission so to do.* [περι πολέμου διαγινώσκειν ὅταν ὁ βασιλεὺς ἐφῇ \*.]

3. THAT Romulus granted to the PEOPLE the Election of all the Magistrates, is an Assertion unsupported by the Testimony of any ancient Writer, except Dionysius, whose Testimony is contradicted by himself, and by the Latine Historians.

What were those Magistrates whom the PEOPLE are supposed to have had an original and constitutional Right of chusing in their Assemblies? The PREFECT OF THE CITY (the Prince or President of the Senate) was nominated by King ROMULUS. This is declared by Dionysius himself. That the KINGS likewise chose the QUÆSTORS is intimated by Tacitus; who tells us, that the same Privilege was enjoyed by the CONSULS †, till the PEOPLE assumed it to themselves. And though Plutarch differs from Tacitus concerning the Time when the Quæstorship was first instituted, and gives the Election of the Quæstors to the People so early as the Consulship of Poplicola, yet he represents this Privilege as a favour granted to the People by that popular Consul.

At length, he strait proceeds towards the Execution of it, by sending for the three Roman Brothers, and engaging their Consent to be their Country's Champions. (p. 152.) Then he assembles the SENATE, and, having in presence of, the Fathers given the young Men the Praises due to their generous bravery, immediately dispatches Ambassadors to notify to the Alban General, that the Romans have agreed to the Combat proposed, for determining the Contest between the two States for Empire. (p. 154.) Just before the Champions begin the Conflict, the Treaty is rehearsed and sworn to: but not one Word is there of *Comitia Curiata* in all this Affair, though an Affair of the most general, and most interesting Concern to the Roman People.

\* De bello decernere quoties Rex permisisset. D. H. p. 87.

† Quæstores Regibus etiam tum imperantibus instituti sunt, quod Lex curiata ostendit, ab L. Bruto repetita. Mansitque Consulibus potestas deligendi, donec eum quoque Honorem Populus mandaret. Annal. Lib. xi. c. 22.

Romulus



Romulus being perpetual Generalissimo and reserving to himself the *supreme \* Power in War*, must naturally have had the Nomination of all the Officers of the Army. And, I believe, there is no antient Author, except Dionysius, who says that the *Celeres*, the Lifeguard of this King, were chose by the *Curia*.

The King himself was SOLE JUDGE in all Causes, civil and criminal, till Servius Tullius transferred to the Senators the Cognizance of civil Causes, and of such Crimes as did not affect the State, i. e. such as were not treasonable. *Dionysius* says nothing of the DUUMVIRS, whom, according to *Livy*, King Tullus Hostilius *commissioned* to try Horatius. The Greek Historian (as we have before observed) makes the KING, in order to rid himself of a Perplexity, refer that Cause immediately to the PEOPLE, and tells us, it was the *first* time, the *People* saw themselves *Judges* in a criminal Cause.

Dionysius expressly affirms that ROMULUS reserved to himself the SUPREMACY † in *religious* Affairs; and the same Historian tells us, that when any of the PONTIFFS, (to whom NUMA transferred that Supremacy) died, the pontifical College, and *not* the PEOPLE, elected the Persons, that were to supply the Vacancies.

It were to be wished therefore, that the learned Gentlemen, who, on the Authority of Dionysius, attribute to the PEOPLE, in *Comitia Curiata*, the Choice of ALL the *Magistrates*, had specified the Magistracies that were supplied by such Elections. When Canuleius the Tribune, from the PEOPLE's antient Right of chusing, at Pleasure, from among the Romans, or from

\* ηγεμονίαν αυτοκρατορά εν πολέμω. D. H. p. 87.

† Βασιλει εξηρτη ταδε τα γερα· πρωτον μιν ιερον και θυσιαν ηγεμονιαν εχειν, και παντα δι' εκεινη πραττεσθαι τα προς τους θεους οσια. D. H. p. 87.

— Πλημμελες προσασφρευουσιν—δικαζουσιν ουτοι τας ιερας δικας απασας ιδιωταις τε και αρχουσι και λειτουργοις θεων.—ουτε βελη λογον αποδιδουσι ετε δημω.—εκλιποντος δε τινος αυλων τον βιον, ετερος εις τον εκεινι καθιστατο [καθισταται Vat. M. S.] τοπον εχ' υπο τε δημω αιρεθεις, αλλ' υπ' αυλων εκεινου, ος αν επιηδειστος ειναι εδοκει [δοκει Vat.] των πολων. p. 132, 133.

Dionysius (p. 93.) reports that Romulus, by an express Law, ordained, that all the Priests and Ministers of Religion should be chosen by the *Curia*; (he does not say, by the *Comitia Curiata*) each *Curia* or Parish was to chuse its own Priest, but they were to have no other Religion than that which was by Law established. The King prescribed to them what Gods and Demi-gods they should worship, and what Rites and Ceremonies they should perform, to the Honour of those Divinities.

among

among Strangers, from the Patricians or from the Plebeians, Persons to fill the vacant Throne, infers a Right, in the People, to chuse Consuls out of either Order, it is remarkable that he does not mention any inferior Magistrates as chosen by the PEOPLE, in the times of the KINGS.

Vid. supr.  
p. 83.

From better Testimony than that of Dionysius (I mean the Testimony of *Livy* and *Tacitus*), it would seem therefore, that originally the King had the Nomination of the Persons to fill whatever Magistracies were then established; and (to use Dr. Middleton's manner of reasoning) if the King chose the *Magistrates*, it is highly probable that he chose the *Senators*.

Treat. p. 35.  
Vid. supr. p.  
84.  
Vid. supr. p.  
95, 96.

And it ought to be observed that there is no Historian who pretends that it was constitutionally and originally the Prerogative of the People to *elect* the Members of the Senate. Dionysius himself does not say it. He tells us that Romulus left to the People the Choice of 99 of the 100 first Senators, and the Choice of the 100 Sabines who (he pretends) were, some Years after, added to that Assembly. But these two instances (supposing the Facts true) do not prove, nor even make probable, what Dr. Middleton contends for, *that the Right of chusing Senators was originally and constitutionally vested in the PEOPLE*. The same Greek Historian gives us two Instances, where the People, (the Throne being vacant) left the Fathers free to establish what Form of Government they liked best: But can it be inferred from thence that the Senate had an original and constitutional Right to change the Constitution whenever they pleased?

D. H. p. 85,  
86.  
Dr. Chapman's Essay,  
p. 14, 15.

I observe, that, notwithstanding Dionysius's very pretty Story of *the manner how the Roman Senate*, consisting of one hundred Persons, was *formed* by ROMULUS, viz. The King himself nominated and appointed One of the Number, who was to be *Prince of the Senate*, or first Senator: Then, by the King's Direction, each of the *three Tribes* chose *three*, and each of the *thirty Curiae* chose *three* [thirty times three, and three times three, and One by himself One] in all exactly one hundred.—I observe, I say, that notwithstanding this very pretty, and *exact*, and *faithful* Account, (the Product of *diligent Enquiries*) Dr. Taylor, in his *Elements of Civil Law*, agrees with Mr. Kennet and M. Vertot in thinking, that these Counsellors of the KING,

p. 204.  
Antiq. part 2.  
D. 3. ch. 2.



the *Senators*, were all chose by the KING himself. And indeed, according to Livy, the Divisions of the People into *Curia* and *Tribes* were posterior, many Years, to Romulus's Creation of a Senate.

TO what has been already offered against the Supposition of the PEOPLE's having originally and constitutionally, all the Privileges of a Democracy, may be added the many Passages we meet with, in the Latine Writers, importing a more considerable Difference between the *regal* and the *free* States of Rome, than is consistent with that Notion.

TACITUS begins his *Annals* with Words to this Effect,—  
 "ROME was originally under the arbitrary Government of Kings.  
 "Brutus introduced Liberty and the Consulship [i. e. Government  
 "by Magistrates annual and accountable.] *Urbem Romam à principio*  
 "REGES HABUERE. *Libertatem et Consulatum L. Brutus instituit* \*." Which agrees very well with the Passage before cited from the same Author, "Romulus governed the Romans according  
 "to his Sovereign Will and Pleasure: *Nobis Romulus ad libitum* 101.  
 "imperitaverat."

LIVY's Characteristic of the *free* State of Rome, as distinguished from the *regal*, is (as we have before observed) that it was a State where LAWS were more powerful than MEN. Vid. *supr.*

\* These Words are by Mr. Thomas Gordon thus translated, "Kings were  
 "the original Magistrates of Rome. Lucius Brutus founded Liberty and the  
 "Consulship" Which Translation seems intended, not to give us the Sense of the Author, but the Nonsense of Mr. Thomas Gordon: For it is not credible that Tacitus could mean to intimate any Inconsistency of Liberty with Kingly Government, where KINGS are Magistrates, whose Power is restrained and directed by established Laws, and is controllable by a superior Authority in the State: which the translator supposes to have been the Case of King Romulus. "The Power  
 "of the Roman Kings was, from the first Establishment, very short; they had  
 "no negative Voice in the Senate, and could neither make War nor Peace.  
 "What TACITUS says of ROMULUS, can only mean his administering Justice,  
 "as the chief Magistrate, between Man and Man [This is borrowed from Ryckius  
 "vid. *supr.* p. 102.] or perhaps his Encroachment upon the Senate towards  
 "his latter End, for which it is thought he paid dear." Disc. upon Tacit. p. 112. Oâav. Edit.

N. B. The Words (here referred to) of Tacitus, concerning Romulus, viz. *Nobis Romulus ad libitum imperitaverat*, Mr. Thomas has thought fit thus to translate. — To the Romans Justice was administered by ROMULUS according to his Pleasure, that is to say, Romulus administered Justice or Injustice to the Romans, just as he pleased.

*Imperia*

*Imperia legum potentiora quam hominum.* Many Laws were enacted by the Kings; but the Kings dispensed with their own Laws. This is intimated by Livy, where he speaks of the young Nobles seduced into a Plot to restore Tarquin. Having been Companions of Tarquin's Sons, they had lived more licentiously than they could hope to do under the new Government: for they knew, that *Laws* were deaf and inexorable; whereas a King could be prevailed upon to do either right or wrong as occasion might require \*.

A State governed by established Laws, which are made by the PEOPLE, and to which even the Kings of that State are subject, is a FREE State. Yet (as we have seen) the Reason given by Livy, why the Romans were unanimous in the Desire of continuing *Kingly* Government (i. e. *Monarchy*) after the Death of Romulus, is, That *they had not yet tasted the Sweets of LIBERTY*.—*Regnari omnes volebant, Libertatis dulcedine nondum experta.* And this agrees perfectly well with what Polybius says of the first Constitution, the Improvement and Perfection of the *Roman Government* †.

Polyb. L. 6.  
p. 629. octav.  
edit. Amst.  
1670.

" That there are six Kinds of Government must be allowed;  
" the three which have been already mentioned [*Kingly Govern-*  
" *ment, Aristocracy and Democracy*] and three that are allied  
" to them, namely, *Monarchy, Oligarchy, and the Government*  
" *of the Multitude.*

" The first of these [*MONARCHY*] is instituted by NATURE,  
" without the Assistance of Art.

" The next is *KINGLY* Government, which is derived from  
" the other by Art and Improvement;

" When this degenerates into the Evil that is allied to it,  
" I mean, *TYRANNY*, the Destruction of the Tyrant gives Birth  
" to *ARISTOCRACY*; which degenerating also, according to the  
" Nature of Things, into *OLIGARCHY* [i. e. Government by  
" a few powerful and overbearing Oppressors] the People inflam-

\* *Regem Hominem esse, à quo impetres, ubi jus, ubi injuria opus sit: esse gratiæ locum, esse beneficio; et irasci et ignoscere posse: inter amicum atque inimicum discrimen nosse. Leges rem surdam, inexorabilem esse, salubriorem melioremque inopi quam potenti: nihil laxamenti nec veniæ habere, si modum excesseris: periculosum esse, in tot humanis erroribus, solâ innocentia vivere.* Liv. L. 2. c. 3.

† I shall borrow the Translation made by the Anonymous Author of the *Dissertation upon the Roman Senate*, changing only a few Words.



“ ed with Anger, revenge the Injustice of their Magistrates,  
 “ and form a DEMOCRACY; from the Insolence of which, and  
 “ their Contempt of the Laws, arises, in time, the *Government*  
 “ of the MULTITUDE.

“ Whoever examines, with Attention, the natural Principles,  
 “ the Birth and Revolution of each of these Forms of Go-  
 “ vernment, will be convinced of the Truth of what I have  
 “ advanced: For he alone, who knows in what manner each of  
 “ them is produced, can make a Judgment of the Improvement,  
 “ the Perfection, the Revolution and End of each; and when  
 “ and by what means, and to which of the former States it  
 “ will return. I thought this Detail, in a particular manner  
 “ applicable to the ROMAN GOVERNMENT, because *its first Con-*  
 “ *stitution and its Improvement were according to NATURE*; [that  
 is (if I rightly take our Author's meaning) it began, with Ro-  
 MULUS, in MONARCHY; which was, by NUMA, improved  
 into \* KINGLY Government; which, in the Hands of Tar-  
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 laid the Foundation of it by the Establishment of the *Tribuneship*.]

Again, “ What [says our Author] are the Beginnings of Go-  
 vernment?—As in Animals of other Kinds, (Bulls, wild  
 Boars, Cocks, &c.) which are influenced by the Instinct of  
 Nature alone, we observe, that the strongest are, by common  
 Consent, the Masters (which ought therefore to be looked  
 upon as the most genuine Work of Nature :) So it is probable  
 that Men, when they first get together like a Herd, are go-  
 verned by those of the greatest Strength, and Courage; the  
 Measure of whose Power is Strength, and their Government  
 MONARCHY. When the Individuals, thus assembled, become,  
 by living together, habituated to one another, then is the  
 Foundation laid of KINGLY Government, and then do Man-

\* Livy (L. i. c. 19.) seems to have the same Thought, when he says of *Numa*,  
 that he prepared to build anew upon the Foundations of *Justice, Laws and Manners*,  
 that new City which had been built by Arms and Violence. *Urbem novam con-*  
*ditam vi et armis, jure eam legibusque, ac moribus de integro condere parat.*

*Imperia legum potentiora quam hominum.* Many Laws were enacted by the Kings; but the Kings dispensed with their own Laws. This is intimated by Livy, where he speaks of the young Nobles seduced into a Plot to restore Tarquin. Having been Companions of Tarquin's Sons, they had lived more licentiously than they could hope to do under the new Government: for they knew, that *Laws* were deaf and inexorable; whereas a King could be prevailed upon to do either right or wrong as occasion might require \*.

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 Nature alone, we observe, that the strongest are, by common  
 Consent, the Masters (which ought therefore to be looked  
 upon as the most genuine Work of Nature :) So it is probable  
 that Men, when they first get together like a Herd, are go-  
 verned by those of the greatest Strength, and Courage; the  
 Measure of whose Power is Strength, and their Government  
 MONARCHY. When the Individuals, thus assembled, become,  
 by living together, habituated to one another, then is the  
 Foundation laid of KINGLY Government, and then do Man-

\* Livy (L. i. c. 19.) seems to have the same Thought, when he says of Numa,  
 that he prepared to build anew upon the Foundations of *Justice, Laws and Manners*,  
 that new City which had been built by Arms and Violence. *Urbem novam con-*  
*ditam vi et armis, jure eam legibusque, ac moribus de integro condere parat.*

“ kind receive the first Tincture of Honour and Justice, and of  
 “ their Opposites.” [The Author proceeds to describe in what  
 manner these Notions are formed; and speaks of the Honour and  
 Praise that will attend Gratitude to Parents, and Actions of Be-  
 neficence to the Community, and of the Censure and Dislike  
 that Persons of a contrary Behaviour will draw upon themselves;  
 and of the Influence which Praise and Censure will have on  
 Men's Conduct; and then he proceeds thus] “ When the Per-  
 son to whom, as endowed with superior Strength, the rest sub-  
 mit, has, by Words and Actions, created in his Subjects an  
 Opinion, that he will treat every one according to his Merit,  
 they are no longer afraid of Violence, but willingly submit  
 to him, and unite in supporting his Government, even though  
 he be far advanced in Years, unanimously defending him against  
 all those who endeavour to supplant him in Command. By  
 this means a MONARCH insensibly becomes \* a KING, that  
 is, when the Power is transferred from Strength to Reason —  
 When “ Kingly Government degenerated into Tyranny —  
 a Conspiracy was formed for the Destruction of those who  
 exercised it: the Chiefs of which Conspiracy were not Men of  
 inferior Rank, but Persons of the most generous, most exalted,  
 and most enterprising Spirit; because such Men can least bear  
 the Insolence of those in Power. The People therefore having  
 those to lead them, united against their *Kings*, and *Monarchy*,  
 and having extirpated both them, an *Aristocracy* began to be  
 established.  
 “ For the People, as an immediate Acknowledgment to those  
 Leaders who had destroyed Monarchy, chose them to be their  
 Governors, and left all their Concerns to them. These, at  
 first, chearfully accepting the Trust, preferred the Advantage  
 of the Public to all other Considerations, and administered all  
 Affairs, both public and private, with Care and Vigilance:  
 But—the Children of these having succeeded their Parents  
 in the same Power, they, being unacquainted with Evils, ab-  
 solute Strangers to civil Equality and Liberty, and educated

\* The Author had said before (p. 629.) that every *Monarchy* is not presently  
 to be called a *Kingly Government*, but only that which is the Gift of a willing  
 People.

from



“ from their Infancy in the Splendor of the Power and Dignity  
“ of their Parents, some of them gave themselves up to Ava-  
“ rice and the Desire of unjust Gain, &c.—By this means p. 636.  
“ they changed the *Aristocracy* into an *Oligarchy*; and very  
“ soon their Ruin, through the People's Resentment, was  
“ like that of the Tyrants: and the People, not daring ei-  
“ ther to appoint a *King* to govern them, or to intrust the  
“ Government with a select Number, having still before their  
“ Eyes the Misconduct of the *Oligarchy*, took upon them-  
“ selves the Charge of the public Affairs and established a *De-*  
“ *mocracy*.”

Polybius seems here to have intended an exact Description of what had passed in the Roman State before his Time; his next words are a Prediction, (formed upon Experience and the Principles of Reason) of what would happen to the Romans, according to the natural Course of Things.

“ As long as any are living, who felt the Power and Do-  
“ minion of the *few*, they acquiesce under the present Establish-  
“ ment, and look upon Equality and Liberty as the greatest  
“ Advantages. But when the Democracy falls into the Hands  
“ of their Children's Children, these, especially the richest, not  
“ having a due Sense of the Value of Liberty and Equality p. 637.  
“ (because accustomed to them) growing ambitious of Power  
“ above the rest, and not being able, by any superior Merit,  
“ to obtain their Desire, squander their Wealth in alluring and  
“ corrupting the People, by every Method. And when, to serve  
“ their wild Ambition, they have once taught them, to receive  
“ Bribes, and Entertainments, from that Moment the *Demo-*  
“ *cracy* is at an End, and changes to Force and Violence;  
“ for the People being accustomed to live at the Expence of  
“ others, and to place their Hopes of a Support in the For-  
“ tunes of their Neighbours, if headed by a Man of a great  
“ and enterprising Spirit, but who, through his Poverty, is ex-  
“ cluded from public Offices, will then have recourse to Vio-  
“ lence, and will murder or banish, and divide among them-  
“ selves the Lands of, their Adversaries, till grown wild with  
“ Rage, they again find a Master, and a Monarch.

" This is the natural Course of Things, and this is the  
 " Rotation by which Governments are changed and trans-  
 " formed, and return to their original States. Whoever there-  
 " fore is perfectly acquainted with these Things, though he  
 " may possibly be mistaken in Point of Time, when he speaks  
 " of the future State of any Government; yet, if he gives his  
 " Opinion without Anger or Envy, he will seldom mistake  
 " in the Degree of the Improvement or Corruption of each,  
 " or in the Change that attends it. This Consideration, above  
 " all others, will lead us to the Knowledge, not only of the first  
 " Constitution, the Improvement and Perfection of the *Roman*  
 " *Government*, but also of its future Return to its first Constitu-  
 " tion: for as this, and the Improvement of it were according  
 " to Nature, so will be its return [i. e. it will naturally return  
 " to *Monarchy*.]

p. 638,

" LYCURGUS foreseeing, that KINGLY Government was apt  
 " to degenerate into *Monarchy*, ARISTOCRACY into *Oligarchy*,  
 " DEMOCRACY into Rage and Violence, to avoid these In-  
 " conveniencies, formed not his Government simple, and of  
 " one Sort only, but united, in one, all that was good, in  
 " Kingly, Aristocratical, and Democratical Governments,— and  
 " by this means preserved Liberty to the Lacedæmonians longer  
 " than any other People ever enjoyed it. — The ROMANS have  
 " arrived at the same End in forming their Commonwealth,  
 " not indeed by reasoning" [from what had happened in other  
 " States, as he did,] " but by embracing such Measures, as *their*  
 " *own Experience*, under the Difficulties they had to struggle with,  
 " taught them to be the most advantageous, &c. \*"

p. 639.

FROM

\* Ρωμαῖοι δὲ τοῦ μὲν τέλους ταῦτο πεποινηταὶ τῆς ἐν τῇ πατρίδι κατὰσταως, οὐ μὴν δια-  
 λογῶν διὰ δὲ πολλῶν ἀγώνων καὶ πραγμάτων, ἐξ αὐτῆς αἰ τῆς ἐν ταῖς περιπετείαις ἐπιγνώ-  
 σεις αἰρημένοι το βέλτιον. Polyb. L. 6. p. 639.

The Substance of what *Polybius* says farther on this Head, is to the following Effect.

" All the three principal Forms of Government are so united in the Roman  
 " Commonwealth, that it is scarce possible for even a Roman Citizen to say  
 " positively, whether the Government, in the whole, be *Aristocratical*, *De-*  
 " *mocratical* or *Monarchical*.—

" The CONSULS, while resident at Rome, have the Administration of all  
 " public Affairs; and all the other Magistrutes, excepting the *Tribunes of the*  
 " *Commons*, are subject to their Orders. " They



FROM these Passages of POLYBIUS, it is very manifest, that he did not think the Roman Government in its first Constitution, so democratical, and excellent, and Greek-like, as Dionysius represents it; but that it was a meer *Monarchy* not so good as a *Kingly* Government, and therefore it is not probable from the Nature of the Roman Government, as it was administered under the Kings, that the Right of chusing Senators was originally and constitutionally vested in the PEOPLE. Vide supra P. 83, 84.

“ They have almost an absolute Power in every Thing relative to the Preparations for War, and to the Conduct of it in the Field. They give what Orders they please to the auxiliary Troops of the Allies; they appoint the *Tri-bunes* (the Colonels) of the army; they may raise forces; and, when in the Field, they may expend as much as they please of the public money, being always attended by a *Quæstor*, who is to supply their Demands:—So that whoever casts his Eye on the Authority of the CONSULS, may with good Appearance of Reason affirm, that the Government is merely *Monarchical* and *Kingly*.

“ The SENATE have the Disposal of all the public Money, except what the *Quæstors*, in time of war, disburse by the Direction of the Consuls, as has been just mentioned. The Senate likewise takes Cognizance of all Crimes that require a public Animadversion, *Treasons, Conspiracies, Poisonings, Assassinations*.—To send and to receive Embassies, to negotiate Treaties, and Alliances with foreign States, and to declare War [when War has been determined by the People] these too are in the Province of the Senate.—So that when a Foreigner comes to Rome, in the absence of the Consuls, the Government appears to him *Aristocratical*: which opinion prevails among the Greeks in many Places; and some Kings have the same Persuasion; because almost all their Transactions with the Romans are ratified by the SENATE.

“ The PEOPLE, notwithstanding all this, have the most considerable Share of the Government: For they alone have the Power of *rewarding* and *punishing*; to the just Exercise of which Power all Governments whatsoever owe their Stability. Frequently the PEOPLE take Cognizance of Causes, where the *Fine* to be imposed is considerable, particularly where the Criminals are Persons who have held great Employments; and in *capital* Cases the PEOPLE alone have Jurisdiction.—They have likewise the Power of conferring the *Magistracy*, which is the most honourable Reward of Merit any Government can bestow; and, according to their Pleasure, they reject or confirm Laws. Add to all this, that it is the prerogative of the PEOPLE to determine concerning PEACE and WAR; and concerning ALLIANCES and CONVENTIONS, which they may either confirm or annul: So that one may with Reason assert, that the PEOPLE have the largest Share of Power, and that the Government is DEMOCRATICAL.”

*Concerning the Merit of Dionysius, as a Writer of  
Roman History.*

THE Authority then of *Dionysius of Halicarnassus* is the only Support of the Opinion, embraced by the two learned Doctors, That, during the Regal State of Rome, the PEOPLE chose the SENATORS.

Dr. Middleton, as we have before observed, makes no Scruple to say, that (in the present Question) we must prefer one Greek to all the Latin Writers—and that “as far as the Case can be determined by Authority, the CHARACTER of *Dionysius* will bear us out in adhering to him preferably to all others, especially in Points of Antiquity, or Things remote from their own Knowledge.”

And Dr. Chapman, in his Essay, making a Comparison between *LIVY* and *DIONYSIUS*, writes thus: “*LIVY*, though one of the most beautiful, is certainly not the most exact Historian. Long and laborious Searches into the Antiquities of the most remote Ages, did not so well suit the Taste and Genius of the Latin Historian; and he appears to have been qualified, rather for compiling a popular History, than the Drudgery of collecting or digesting the Materials, for one calculated to satisfy the more learned and inquisitive Reader. His Work as being designed for the Use of his own Countrymen, is rather employed in celebrating the military, than the civil Virtues of the Romans; the Nature of their Government at its first Institution, or the Alterations it suffered afterwards [which were, I suppose, what *POLYBIUS* calls the Improvements it received] are Points he touches only occasionally; presuming perhaps, that his Readers were not very solicitous about, or sufficiently acquainted already with particulars of that kind. *DIONYSIUS*, on the contrary, being a Native of Greece, where the Nature of popular Government was much studied, and each particular Form established, and put in practice, was more than ordinarily inquisitive in these Points; he professedly discusses the Policy of the Roman Constitution as it was first settled, remarks

“ the



" the Wisdom of each particular Institution, and records with  
 " the utmost Care, whatsoever had the least Tendency afterwards,  
 " to undermine or weaken the Foundation upon which it was  
 " built. *Fidelity and Exactness*, more especially in these par-  
 " ticulars, is *the very Characteristic of the Greek Historian*; and  
 " therefore the best and most judicious Compilers of Roman An-  
 " tiquities have without Scruple preferred his Authority to that  
 " of Livy." That is to say (if I mistake not) the *most judicious*  
*Compilers of Roman Antiquities generously bestow on Dionysius the*  
*Character of Fidelity and Exactness, and then, as if he deserved that*  
*Character, do without Scruple build on his Authority.* For how is it  
 possible for modern Compilers to know, that *Dionysius is faithful*  
*and exact* in such particulars, as are never mentioned by any  
 other Writer? Is there any antient Writer, who praises him as  
 he praises himself?

The Testimonies of Authors, prefixed to Hudson's Edition of  
 Dionysius, are referred to by Dr. Middleton, as of considerable Treat. p. 21.  
 Weight: but, as I do not apprehend, that they are of more  
 Force to determine our Judgment on this Point, than the Dr's  
 own Testimony, I shall not consider them particularly, but,  
 against the whole Legion, present a Champion, who, better armed,  
 because armed with good Reasons, seems to me an overmatch for  
 all the Panegyrist of the Greek Rhetorician.

MR. HOBBS, in his Discourse, *Of the Life and History of*  
*Thucydides*, after citing, in his Favour, some Testimonies, the  
 last of which is that of DIONYSIUS, continues thus:

" THESE Testimonies are not needful to him that hath read HOBBS.  
 " the History itself, nor at all, but that this same Dionysius  
 " hath taken so much Paines, and applyed so much of his Fa-  
 " culty in Rhetorique to the extenuating of the Worth thereof;  
 " moreover I have thought it necessary to take out the principal  
 " Objections he maketh against him, and without many Words  
 " of mine owne, to leave them to the Consideration of the  
 " Reader.

" And first DIONYSIUS saith thus. *The principall and most* DIONYSIUS  
 " *necessary Office of any Man that intendeth to write a History, is* de præcip.  
 " *to chuse a noble Argument, and grateful to such as shall reade* Hist. p. 128.  
 " *it. And this, Herodotus, in my Opinion, hath done better than*  
 " *Thucydides,*

" *Thucydides.* For *Herodotus* hath written the joynt History, both  
 " of the *Greeks* and *Barbarians*, to save from Oblivion, &c.  
 " But *Thucydides* writeth one onely Warre, and that neither honour-  
 " able, nor fortunate; which principally were to bee wished never  
 " to have beene; and next, never to have beene remembred, nor  
 " knowne to Posterity. And that he tooke an evill Argument in  
 " Hand, he maketh it manifest in his Proeme, saying, That many  
 " Cities were in that Warre made desolate, and utterly destroyed,  
 " partly by *Barbarians*, partly by the *Greekes* themselves: so  
 " many Banishments, and so much Slaughter of Men as never was  
 " the like before &c. So that the Hearers will abhorre it, at  
 " the first propounding. Now by how much it is better to write  
 " of the wonderfvl Acts both of the *Barbarians* and *Greci-*  
 " *ans*, then of the pittifull and horrible Calamities of the *Gre-*  
 " *cians*, so much wiser is *Herodotus* in the Choyce of his Argu-  
 " ment, then *Thucydides*.

HOBBS.

" Now let any Man consider whether it be not more reason-  
 " able to say, that the principal and most necessary Office of  
 " him that will write a History, is to take such an Argument,  
 " as is both within his Power well to handle, and profitable to  
 " Posterity that shall reade it. Which *Thucydides*, in the Opi-  
 " nion of all Men, hath done better then *Herodotus*. For  
 " *Herodotus* undertooke to write of those Things, of which it  
 " was impossible for him to know the Truth, and which delight  
 " more the Eare with fabulous Narrations, then satisfie the Mind  
 " with Truth. But *Thucydides* writeth one Warre, which,  
 " how it was carried from the Beginning to the End, he was  
 " able certainly to informe himselfe. And by propounding in  
 " his Proeme the Miseries that happened in the same, he shew-  
 " eth that it was a great Warre, and worthy to be knowne,  
 " and not to be concealed from Posterity, for the Calamities  
 " that then fell upon the *Grecians*; but the rather to be  
 " truely delivered unto them, for that Men profit more by  
 " looking on adverse Events then on Prosperity. Therefore by  
 " how much Mens Miseries doe better instruct, then their good  
 " Successe, by so much was *Thucydides* more happy in taking  
 " his Argument, then *Herodotus* was wise in chusing his.



" DIONYSIUS againe, saith thus. The next Office of him that  
 " will write a History, is to know where to begin, and where to  
 " end. And in this Point Herodotus seemeth to be farre more dis-  
 " creet than Thucydides. For in the first Place he layeth down  
 " the Cause, for which the Barbarians began to injure the Gre-  
 " cians; and going on, maketh an End at the Punishment and the  
 " Revenge taken on the Barbarians. But Thucydides begins at  
 " the good Estate of the Grecians, which, being a Grecian and  
 " an Athenian, he ought not to have done; nor ought he, being of  
 " that Dignity amongst the Athenians, so evidently to have laid  
 " the Fault of the Warre upon his own City, when there were  
 " other Occasions enough to which he might have imputed it. Nor  
 " ought he to have begun with the Business of the Corcyraeans, but  
 " at the more noble Acts of his Country, which they did imme-  
 " diately after the Persian Warre (which afterward in conve-  
 " nient Place he mentioneth, but it is cursorily, and not as he  
 " ought.) And when he had declared those, with much Affection,  
 " as a Lover of his Country, then he should have brought in,  
 " how that the Lacedaemonians, through Envy and Feare, but  
 " pretending other Causes, began the Warre, and so have de-  
 " scended to the Corcyraean Business, and the Decree against the  
 " Megareans, or whatsoever else he had to put in. Then in the  
 " ending of his History, there be many Errors committed. For  
 " though he professe he was present in the whole Warre, and that  
 " he would write it all, yet he ends with the navall Battell at Cy-  
 " nossima, which was fought in the 21 Year of the Warre; whereas  
 " it had beene better to have gone through with it, and ended his Hi-  
 " story with that admirable and grateful Return of the banished Athe-  
 " nians from Phile, at which Time the City recovered her Liberty.

DIONYSIUS.  
 P. 129.

" To this I say, that it was the Duty of him that had under-  
 " taken to write the History of the Peloponnesian Warre, to  
 " begin his Narration no further off, than at the Causes of the  
 " same, whether the Grecians were then in good, or in evil Estate.  
 " And if the Injury, upon which the Warre arose, proceeded  
 " from the Athenians, then the Writer, though an Athenian,  
 " and honoured in his Country, ought to declare the same, and  
 " not to seeke, nor take, though at Hand, any other Occasion  
 " to transerre the Fault. And that the Acts done before the  
 " Time

HOBBS.

“ Time comprehended in the Warre he writ of, ought to have  
 “ been touched but cursorily, and no more then may serve for  
 “ the enlightening of the History to follow, how noble soever  
 “ those Acts have beene. Which when he had thus touched,  
 “ without Affection to either Side, and not as a Lover of his  
 “ Countrey, but of Truth, then to have proceeded to the rest,  
 “ with the like Indifferency. And to have made an End of  
 “ writing where the Warre ended, which he undertooke to  
 “ write; not producing his History beyond that Period, though  
 “ that which followed were never so admirable and acceptable.  
 “ All this Thucydides hath observed.

“ THESE two Criminations I have therefore set down at  
 “ large, translated almost verbatim, that the Judgement of Dio-  
 “ nysius Halicarnassius may the better appeare concerning the  
 “ mayne and principall Vertues of a History. *I think there*  
 “ *never was written so much Absurdity in so few Lines. He is*  
 “ *contrary to the Opinion of all Men that ever spake of this*  
 “ *Subject besides himselfe, and to common Sense. For he makes the*  
 “ *Scope of History not Profit by writing Truth, but Delight of*  
 “ *the Hearer, as if it were a SONG.* And the Argument of  
 “ History, he would not by any meanes have to containe the  
 “ Calamities and Misery of his Countrey, (these he would have  
 “ buried in Silence) but onely their glorious and splendid Actions.  
 “ *Amongst the Vertues of an Historiographer, he reckons Affection*  
 “ *to his Countrey; study to please the Hearer; to write of more*  
 “ *then his Argument leads him to, and to conceale all Actions*  
 “ *that were not to the Honour of his Countrey.* Most manifest  
 “ Vices. *He was a Rhetorician, and it seemeth he would have*  
 “ *nothing written, but that which was most capable of rhetoricall*  
 “ *Ornament.* Yet Lucian, a Rhetorician also, in a Treatise,  
 “ entituled, How a History ought to be written, saith thus.  
 “ That a Writer of History, ought in his Writings, to be a for-  
 “ rainger, without Countrey, living under his owne Law onely,  
 “ subject to no King, nor caring what any Man will like or dis-  
 “ like, but laying out the Matter as it is.—

“ SOME Man may peradventure desire to know, what Mo-  
 “ tive Dionysius might have, to extenuate the Worth of him,  
 “ whom he himselfe acknowledgeth to have beene esteemed by



" all Men, for the best by farre of all Historians that ever writ,  
 " and to have beene taken by all the antient Orators and Philo-  
 " sophers, for the Measure and Rule of writing History. What  
 " Motive he had to it, I know not; but what Glory he might  
 " expect by it, is easily knowne. For having first preferred  
 " Herodotus, his Countryman, a Halicarnassian, before Thucy-  
 " dides, who was accounted the best, and then conceiving that  
 " his owne History might perhaps be thought not inferior to that  
 " of Herodotus, by this Computation he saw the Honour of the  
 " best Historiographer falling on himselfe, wherein (in the  
 " Opinion of all Men) he hath misreckoned \*. And thus much  
 " for the Objections of Denis of Halicarnasse."

We have seen, by the Text and Comment above cited, the Rules which our Greek Rhetorician has laid down, to be observed in writing History, and how just and excellent they are.

Let us now proceed to the account, he gives us of his MOTIVES for undertaking a History of Rome, the STORES from which he had his *Materials*, and the ORDER in which he has placed them.

As the oldest Histories of Rome were written by Greeks, and D. H. p. 5.  
 as the first Histories of Rome, that were written by Romans, were written in Greek, it may seem strange, that the Greeks should, almost universally, even in our Author's time, be ignorant of the History of Ancient Rome. Yet this, he assures us, was the Case.

" † The Greeks, deceived by vulgar Reports, imagine, that P. 4 & 5.  
 " the Founders of Rome were a Crew of Barbarians and Vaga-  
 " bonds, without house or home, and that the Romans are  
 " indebted, not to their virtue, but to fortune, for the Dominion  
 " they have acquired over the Greeks. — To efface these impressions  
 " from the minds of my Countrymen, and engage them to  
 " entertain more just notions, so as not to repine at being subject

\* STRABO and PLUTARCH are the only ancients, who, in Hudson's Edition, appear to the Character of Dionysius. And what is the amount of their Evidence? STRABO says, that *Dionysius the Historian was his Cotemporary, and was born at Halicarnassus.* And PLUTARCH's testimony is, that *Dionysius was mistaken in saying that Remulus rode in a Chariot.* Not a word of Commendation from either of the Deponents.

† I shorten his Discourse.

See his Preface in fine.

" to a People, who, by a superiority of Merit, have a natural  
 " right to Empire over all others, I undertake to prove that the  
 " *First Romans were Greeks* \*, and not a medley of Felons and  
 " Vagrants from all the despicable nations of Italy :—and that it  
 " has not been by the Caprice of fortune, but by piety and virtue,  
 " wise policy, and an excellent form of Government, their  
 " descendants have attained to that high degree of power they at  
 " present possess †. My Countrymen will now learn from  
 " History," [i. e. from the History, written by me, Dionysius,  
 " the Son of Alexander, of Halicarnassus] " that Rome was hardly  
 " born when she began to produce Myriads of men, than whom  
 " no city, Greek or Barbarian, could ever boast more pious,  
 " more just, more temperate, more brave, or more skillful in  
 " war. But these wonderful men, *for want of an Historian* ‡  
 " *worthy to record their Exploits*, are unknown to the Greeks.

\* His proofs of this are admirable, and incomparable. In his seventh Book [page 474] reminding himself of the Promise he had made in his Preface, to prove, he thus performs it.

1. Neither Greeks nor Barbarians ever venture to change any thing in the Ceremonies of Religion, for fear of offending the Gods. The Romans, as appears by the testimony of Fabius Pictor, did, before they had conquered any of the Greeks, and therefore before they could borrow any thing from the Greeks, use the Grecian Ceremonies of Religion, therefore the Romans were originally Greeks.

2. Had the Romans been originally Barbarians, what hindered them from Barbarianizing all the Nations they conquered, by constraining them to use *Barbarian Ceremonies of Religious worship*? They did not do this, therefore they were Greeks originally.

† This blending of Romance with true History brings to one's mind the Discourse of Don Quixot to the Canon; in which he maintains, that the Canon must necessarily deny the Victories of Alexander the Great, and Charlemagne, if he denies the Heroic Acts of King Arthur and his Knights of the Round Table. May we not believe that the *Posterity* of the *First Romans* were eminent for virtue and military skill, without believing that the *First Romans* were honest men and Greeks?

‡ Our Author had said before (P. 2) that *no one had written of the Roman Empire with a Dignity and Eloquence suitable to the Subject*. And from these two passages one may conclude, that he speaks of Greek writers only, or that, at the time of writing his Preface, he knew nothing of Livy's Enterprise, though (from Liv. l. 1. c. 19) it be manifest, that the Latin Historian had written the first part of his Work before the year of Rome 728, above 18 years before Dionysius wrote his preface; which by its own Contents appears to have been written in the year 746. [Fast. Cap.]

" Jerome



" Jerome of Cardia is the first \* Historian, I know of, who  
 " wrote of the Antiquities of Rome. He has touched the Subject  
 " lightly and cursorily in his *Epigoni* [i. e. his History of the  
 " Descendants of the Successors of Alexander, as Scaliger thinks.]  
 " After Jerome comes Timæus of Sicily, who, in his Universal  
 " History, has said something of ancient Rome, and has written  
 " a particular account of the war of the Romans with King  
 " Pyrrhus.  
 " Antigonus [perhaps Antiochus of Syracuse] POLYBIUS,  
 " Silenus and many others have treated, in different manners,  
 " the same subject. Each of these Authors has written some-  
 " thing, no great matter; and the little they have written is in-  
 " accurate, and founded on nothing but uncertain Reports †.  
 " Not more ample, nor of more value are the Productions of  
 " those Roman Authors, who wrote, in Greek, the History of  
 " ancient Rome. The oldest of them are *Quintus Fabius* ‡  
 " [*Pictor*] and *Lucius Cincius* [*Alimentus*], who, both, lived in  
 " the time of the Punic wars. They have written, with exactness  
 " enough, of those things whereof they were Eyewitnesses: But  
 " as to the actions of the Romans presently after the Walls of Rome  
 " were built, they have run them over in a very brief and summary  
 " manner. Wherefore I resolved not to omit that fine part of  
 " the Roman story, of which the ancient Authors have taken so  
 " little Notice, and which, if written with accuracy, will have  
 " two admirable effects. In the first place, the Glory of those  
 " Heroes, whose actions I shall relate, will be made immortal;  
 " Posterity will celebrate their Braises, and will thereby give their  
 " mortal Nature a Resemblance of the Divine. And, in the next

\* It is very remarkable, that Dionysius makes no mention of *Diocles Pepar-  
 rethius*, who, *Plutarch* tells us, was the first who wrote of the Building of  
 Rome. I find by a passage, in p. x. of the Jesuits Preface to their Roman  
 History, that *Dionysius* has been accused of borrowing much from *Diocles*.

† For the sake of our Rhetorician we must believe, that, in giving this  
 Character of *POLYBIUS*'s work, he means only to say, that *POLYBIUS* is very  
 brief in what he relates of the Romans, as previous to the FIRST PUNIC WAR  
 (with which his History properly begins), and in what he relates of the Gallic  
 Wars, as introductory to the SECOND PUNIC WAR. Otherwise *Dionysius*, the  
 son of Alexander, would appear a more absurd Coxcomb, than he can easily be  
 supposed to have been.

‡ He wrote the same History in Latin too.

“ place, the Descendants of those Godlike men will be excited to  
 “ imitate the Virtues of their Ancestors. For my part, as I did  
 “ not undertake this Work with a base purpose of Flattery, but from  
 “ a pure love of Truth and Justice, which ought to be the only  
 “ objects \* of an Historian; so it furnishes me with an opportunity  
 “ of publicly shewing my natural disposition to oblige worthy  
 “ men, and all such as delight to read of, and contemplate  
 “ noble Actions and great Events. At the same time, I shall, by  
 “ this means, give the best proofs I can of my Gratitude to the  
 “ City of Rome for the many benefits I have received from her,  
 “ during my abode here.”

So much for the MOTIVES, which carried Dionysius, the Son of Alexander, to write the Antiquities of Rome. We come now to the SOURCES of his Intelligence, the Stores from which he had his Materials.

“ They who have read Jerome, Timæus, Polybius, or any of  
 “ the writers, whom I have accused of being too concise in their  
 “ Relations, may perhaps suspect me of inventing many par-  
 “ ticulars, not to be met with in those Historians, and may be  
 “ curious to know, where I found them. In order therefore to  
 “ hinder people from entertaining that Opinion of me, it may  
 “ be proper to declare from whence I had my Intelligence; from  
 “ what Authors, from what Annals I was supplied † with the  
 “ matter of my History.

Bef. J. C. 30.

“ I landed in Italy about the middle of the 187th Olympiad,  
 “ when Augustus Caesar put an end to the Civil war. From that  
 “ time I have lived at Rome two and twenty years, during  
 “ which, it has been my constant employment diligently to make  
 “ Enquiries relative to my Work.”

Hence it is pretty evident, that our Rhetorician came to Rome with the purpose of writing a Roman History, and it seems highly probable, from some of his MOTIVES above mentioned, that, being esteemed a good Pen, he was hired to give the Greeks such an account of the Birth of Rome, as might hide the contemptible meanness of her origin. For though he undertook the

\* Vide supr. p. 127, 128.

† Βελτιον αφ' ων ηρμηδην λογαζι τε και υπομνηματισμων διελθειν. p. 6.



History from a pure love of Truth and Justice, yet, in the Execution, it would seem, that he was influenced by *Gratitude*.\*

Well, but whence did he collect all the matter of his Great Book?

"One part of it I learnt by conversing with intelligent + persons, whose company I frequented: the rest, by reading the ancient Roman Historians, *Porcius Cato*, *Fabius Maximus* [Serruilianus,] *Valerius Antias*, *Licinnius Macer*, the *Ælii*, the *Gellii*, the *Calpurnii*, and several others, οὐκ ἀσφαλές, no *Grub-street* Authors: and when I had furnished myself from their Books, which are very like our *Greek Chronicles*, I sat down to write.

"As to the ORDER of my Work, I begin with the old Fables, of which the Historians, who have written before me, have said nothing; because the Knowledge of those Fables was not to be acquired without much Industry and diligent Enquiries [such as I have used.] Then I continue my Narration to the Commencement † of the First Punic War [Y. of R. 489.] I relate all the wars which the Roman People waged against other nations to that time; and I give the History of their domestic seditions, with the causes of them, and the manner how they were terminated; I describe the form of their Government as it was in the time of the Kings, and as it was after their Expulsion, &c."

We see, our Author is so candid as to give notice, that the first part of his Book is Fabulous; but he would have been more candid and obliging, if he had informed us How far this fabulous part reaches. From the contemplation of the constituent parts of his Work, may we not be justified in doubting of every thing

\* It might possibly be from this noble sentiment of *Gratitude*, that our Greek Republican, writing under the Empire of *Augustus*, makes *Brutus* (the King-driver) commend Monarchy as a very good sort of Government.—πρωτον μὲν ἐπειδὴ τὰ ὀνόματα τῶν βασιλευσάντων οἱ πολλοὶ σπουδάζουσιν, καὶ ἀπὸ τούτων ἡ προσκίνηται τιμὰ τῶν βλαβερῶν, ἢ φεύβεται τι τῶν ὀφειλμένων, ἐν οἷς καὶ τὴν μοναρχίαν εἶναι συμβέβηκε.—P. 268.

† Τα μὲν παρὰ τῶν λογιστάων ἀνδρῶν, οἷς εἰς ὁμίαν ἦλθον, διδασχὴ παραλαβὼν. P. 6.

‡ Dionysius seems to have shewn a good degree of discretion in ending his Roman Antiquities at that period, where Polybius had begun his History of the Romans.

he relates, which has not some other witness of its truth? Does he not plainly confess, that his great Book (containing a long story about the origin of the Romans, and what they did during the space of 488 years, after the building of their City-walls) is partly fable, and partly such accounts as he found in Authors, who had said very little \* on the Subject he treats, and who had no better foundation for that little than vulgar Reports; and that the rest is Hearsay-History, such as he could get by conversing with intelligent Persons †? These are the Roman Antiquities of the diligent, the faithful, the exact, the best Historian, Dionysius of Halicarnassus.

Dr.

\* Vide supra, p. 131.

† Hitherto our Author has not mentioned what, without question, he himself thought the most shining part of his performance, I mean, the long and laboured speeches (all his own) with which his Work abounds. In his Preface (p. 2.) he says, that an Historian ought to chuse a Subject, that will give him an opportunity of displaying his Eloquence; but he is not full and explicit upon his own merit in this regard, till he comes to his seventh Book. Speaking there of the Conferences which put an end to the Commotion occasioned, at Rome, by the Affair of Coriolanus, he tells us, that he thought it above all things necessary to give at large the very Speeches that were then made by the Leaders of the contending Factions [ἡ δὲ αὐτοῦ μακρὰ καὶ πολλὰ ἱστορίᾳ εἰς τὴν αὐτῆς τῆς πόλεως αἰτίαν διεξέρχεται διὰ τὸν αἰὶν ἡμετέραν ἐν ἐκείνῳ ἐξηνάτῳ. p. 471.] and he wonders that the Writers, before him, have neglected this duty of an Historian. "They are very exact, in what relates to war, in describing the situation of the place where a Battle was fought, the arms of the Combatants, the order in which they were drawn up, the harangues of the Generals to their Soldiers, and by what means one of the armies came to be victorious over the other: But, when popular Comotions and domestic Revolutions are the Subject, they think there is no need of preserving to Posterity the Speeches that produced the most astonishing effects."

Here we have another proof, that the Greek Writer was wholly unacquainted with Livy's Work; for Livy is a great Speech-maker on the occasion of Civil Contests. However, I have not observed, that he any where carries the jest so far as to pretend, like our Rhetorician, that the Speeches which he ascribes to his great men were, even for the matter of them, the very same which they delivered.

Rome, in the time of Romulus, was half peopled with Sabines, and these Sabines were originally, according to their own account of themselves (as Dionysius reports) a Colony from Lacædæmon. If their descendants did really make such long and tedious Discourses as Dionysius imputes to them, they must surely have met with more than one Epaminondas to teach them to lengthen their Monosyllables. M. Crevier, in his defence of Livy against the attacks of the Critics, who quarrel with him for his direct Speeches, writes thus: "Si gravitate auctorum exemplorumque res dijudicetur, tot se patronis tuebitur Livius quot



Dr. Chapman (in the passage above transcribed from his *Essay*) Vide supr. p. 124, 125. has, I believe, assigned the true reason, why DIONYSIUS is preferred to LIVY by the Compilers of Roman Antiquities. The Work of the *Latine Historian* is not "calculated to satisfy the more learned and inquisitive Reader." But DIONYSIUS "professedly discusses the Policy of the Roman Constitution, as it was first settled, remarks the wisdom of each particular Institution &c." Doubtless the insatiable curiosity of the Learned is the Source of their Credulity, when they believe the testimony which DIONYSIUS bears of himself, and imagine, they find in him what they sought for in vain in the whole Circle of Latin Authors, I mean, a minute and exact Account of the first settlement of the Roman State, and of the changes of its Government, from the building of the City to the abolition of the Decemvirate. But ought not the more learned reader impartially to consider, whether it be probable that this hired Greek was so much better instructed than all the Roman Writers, concerning the Constitution of either the Regal or the Consular State of Rome, as to deserve more credit than they \*? "Must we prefer one Greek to all the Latin Writers?" Yes, says Dr. Middleton.—"Where these two Vide supr. p. 80. [DIONYSIUS and LIVY] happen to differ, it cannot be difficult to decide, which of them ought to have the preference, nay it is already decided by the judgement of all the best Critics; who, upon

"ferè apud Græcos, Latinosque in historiâ maximè claruere Scriptores, Herodoto, Thucydide, Xenophonte, Polybio, Sallustio, Tacito, Curtio, Dionysium Halicarnassenum omitto, apud quem non immeritò fortasse reprehendi possit nimia Orationum prolixitas, quæ et fatigat lectorem, et ingrata interdum narrationi moram injicit.—Fides, inquit, Historiæ violatur, dum ea nobis, tanquam dicta obtruduntur, quæ tamen nunquam reuera dicta sunt. Quasi verò cuiquam innocens ille dolus imponat, aut periculum sit, ne quis illas Livii tam diligenter elaboratas, tam severè castigatas, tantis verborum sententiarumque munditiis exultas Orationes ab horridis illis primorum urbis Romæ temporum aratoribus esse existimet." *M. Crevier's Preface to his Edition of Livy, p. vi. vii.*

\* Dionysius, for the sake of his Grecian Readers, may very pertinently have analysed and explained things, regarding the Constitution of the Roman Government, with which the Romans being universally acquainted, LIVY and the other Latin Writers have but cursorily mentioned them. But I speak not here of those parts of Dionysius's performance, but of those which clash with the Accounts that we have of the Roman Government from the Roman Authors.

"the

“the Comparison, have universally preferred the diligence and accuracy of Dionysius to the haste and negligence of Livy.”  
 Essay, p. 35. “FIDELITY and *Exactness*, more especially in these particulars [the Policy of the Roman Constitution as it was first settled, the Wisdom of each particular Institution &c.] is the very Characteristic of the Greek Historian,” says Dr. Chapman; yet the Doctor does not always give credit to his accounts, even in some particulars of that sort, wherein he thinks him more especially faithful and exact. I have already mentioned one Instance, where the Doctor prefers the testimony of LIVY, on a very material question, namely, whether TARQUIN THE PROUD filled up the Places, which either by the ordinary course of nature, or by his cruelties, during a Tyrannical Reign of 25 years, became vacant in the SENATE.

Vide *supr.* p. 39.

But with regard to the *Fidelity* and *Exactness* of the Greek Antiquary, there is another particular much more important, whereon the Doctor has rejected his Testimony: I mean, the Introduction of *Comitia Tributa* into the Roman State. Dionysius is very express and distinct on this head. He tells us, the first Assembly of that sort was held for the trial of *Coriolanus* [year of Rome 262. Fast. Cap.] and he enters into a very minute and circumstantial account of the memorable innovation: Yet Dr. Chapman has chosen rather to follow LIVY, who places (or, at least, seems to place) the Introduction of those *Comitia* twenty years \* later than the banishment of *Coriolanus*. Now if Livy's report be true, that of Dionysius abounds with Fables; and indeed I am apt to think, they are Fables which he himself invented, merely to get an opportunity of displaying his talent of Rhetoric, in long speeches upon a subject, of which, though extremely ignorant, he would be thought a perfect master.

D. H. p. 464.

His gross mistake, or bold invention in this part of his Story, seems alone sufficient to lower our Ideas of his *Fidelity* and *Exactness*. But if to this we add the remarkable proof he gives of his being extremely ignorant of the Constitution of the *Comitia*

\* “Neither sacrifices, auspices, nor decrees of the Senate were necessary preparatives for this new species of popular Assemblies [*Comitia Tributa*] and therefore the 281st year of the City, which gave the first rise to them, is the *Æra Æc.*” *Essay*, p. 298.

Centuri-



*Centuriata*, or extremely negligent \* in treating the subject, surely there needs no more, totally to destroy his Character of a *diligent, faithful, and accurate* † Historian. How can a writer be thought qualified to give an *exact* and *faithful* History of Rome, who, with great gravity, and an air of instructing his Reader in a nice point, tells him, that the *Patricians*, in *Comitia Centuriata*, though inferior in number, were superior in strength to the *Plebeians*; and yet, a few pages after, imputes to the Inconstancy and Caprice of the *Plebeian* multitude, that, when by their Votes, in an *Assembly of the Centuries*, they could have given the *Military Tribuneship* to *Plebeians*, they would not elect to that Magistracy any but *Patrician* Candidates? *Livy* ascribes this part of their Conduct not to levity, but to virtue and greatness of mind. Be that as it will, it is manifest that neither the *Greek* Historian nor the *Latin*, when speaking of this Event, imagined, that the *Patricians* were superior in strength to the *Plebeians* in *Comitia Centuriata*: For, in case of such superiority, would either of those writers have looked further for a Reason why none but *Patricians* were chosen to be *Military Tribunes*?

D. H. p. 726.

p. 736.

It may perhaps contribute not a little to justify the liberty I take of demurring to the sentence of the learned Doctors and their assessors, concerning *Dionysius*, when compared with *Livy*, if I lay before the Reader the several accounts (abridged) which the two Historians have given of King *Servius Tullius*, the manner in which he possessed himself of the Kingdom, the methods he took to maintain himself in that possession, his political schemes, and the causes of his destruction. The Reign of this King is more deserving of particular attention, than the Reign of any other of the Roman Kings, because his Institutions were made the Foundation of the Republican Government, and his Plan was partly followed in the Establishment of it.

\* See Rom. Hist. in 4to. vol. i. p. 230 & 369. 3d edition. And vide supr. p. 51.

† *Dionysius* is remarkably careless of making the due distinction between *Populus* and *Plebs*; and often, with great impropriety, uses the word *Patricians* for the *Senate*.

## A Summary of LIVY's History of King Servius Tullius.

LIVY reports, that, "upon the Assassination of King Tarquin the Elder, his Widow Tanaquil, to preserve her own life, instigated and encouraged her son-in-law SERVIUS TULLIUS to possess himself of the Throne. *Be a man, SERVIUS (said the Queen) and the Kingdom is yours, not theirs\* who have perpetrated the greatest of Crimes. If by the suddenness of this Stroke, you are so disconcerted, as to need Counsel how to act, Follow mine.*" Then going to a window, and addressing herself to the Throng of People below (who from all Quarters of the City had flocked to the Palace, upon the first rumour of the King's death) she bad them not be discouraged, assuring them, *that the King was not dead; that he had indeed been stunned with the blow, but was come to himself, and she hoped they would see him very soon: That, in the mean time, it was his pleasure, they should pay Obedience to SERVIUS TULLIUS, who would administer justice to them, and perform all the other functions of the Regal Office* †. In consequence of which declaration, SERVIUS, attended by the Lictors, and cloathed in Royal Robes, went to the Forum, where sitting on the King's Throne, he determined some Causes finally, reserving others to be decided by the King himself, when he should be in a condition to do it. Concealing in this manner, so long as was convenient, the death of Tarquin, and pretending to act by his Authority, he found means to establish his own ‡. The sons of Ancus hearing, that the Assassins, whom they had employed, were apprehended, that the King was still alive, and that Servius's Party was very

\* The Sons of the late King Ancus Marcius had hired the Assassins to kill Tarquin.

† Interim Servio Tullio jubere populum dicto audientem esse. Eum jura redditurum, obitumque alia Regis munia. Liv. l. i. c. 41. One may ask here, *in passant*, whether this be compatible with that supposed Prerogative of the People, the Right of electing all the Magistrates?

‡ Per speciem alienæ fungendæ vicis suas opes firmavit. *Ibid.*

" con-



"considerable, went into a voluntary banishment to *Suessa Pometia*."

Thus far the Account given by the *Latin Historian* of the proceedings of *Tanaquil* and *Servius Tullius*, after the murder of *Tarquin*, has no disagreement with the Story delivered by the *Greek Rhetorician*. According to both, *SERVIVS* took possession of the Government as a Viceroy or Regent appointed by the King. But as to his conduct, after public notification of *Tarquin's* death, the two Writers differ widely.

"*SERVIVS* (says *Livy*) provided himself with a trusty Guard, and was the First, who, unauthorised by the PEOPLE, reigned or became KING by the [sole] connivance and consent of the FATHERS \*."

"Mindful of the implacable and fatal resentment of the sons of *Ancus* against the late King [their Guardian] and fearing lest a like resentment against himself should be harboured in the breasts of the late King's sons, *Lucius* and *Aruns*, he gave them his two daughters in marriage. But the decrees of Fate (adds the Historian) were not to be rendered ineffectual by human Policy. Ambition gave birth to Treason in the King's own house, and totally destroyed its peace. Very opportunely for his present domestic quiet, the Truce with the *Veientes* being expired, War was renewed against that People, and some other *Tuscans*, their Confederates; in which war *SERVIVS* so signalized his Courage, and obtained so glorious and complete a Victory, that he returned to Rome a well established King; neither SENATE nor COMMONS having any Inclination to dispute his Title: [*haud dubius Rex, seu Patrum seu Plebis animos periclitaretur, Romam rediit.*]

*Liv. lib. 1. cap. 42.*

"After this war, he applied himself to a most important work of Peace, and made a change in the very Constitution of the State, much to its advantage, laying upon the RICH the chief burden of the Taxes, of which hitherto each Citizen had bore an equal part; and transferring to the Rich that power, which, in the general Assemblies of the PEOPLE, had always belonged to the Poorer sort, as the most numerous †."

\* *Servius praesidio firmo munitus primus injussu Populi, voluntate Patrum regnavit. Ibid.*

† *Hæc omnia in dites à pauperibus inclinata onera. Deinde est honos additus. Non enim (ut à Romulo traditum ceteri servaverant Reges) VIRITIM suffragium*

" After this, he divided the City into four Regions, and he  
 " called those Regions TRIBES, from the Tribute [as Livy thinks]  
 " which the Inhabitants paid. He likewise enlarged the City by  
 " the addition of two Hills.

" And

*eâdem vi eodemque jure promiscue omnibus datum est: sed gradus facti; ut neque exclusus quisquam suffragio videretur, et vis omnis penes primores civitatis esset. Equites enim vocabantur primi; Lxxx inde primæ classis Centuriæ: ibi si variaret, quod raro incidebat, ut secundæ classis vocarentur; nec ferè unquam infra ita descenderent, ut ad infimos pervenirent. Liv. l. 1. c. 43.*

Treat. p. 25.

" CONCERNING this change Dr. Middleton writes thus: " It is agreed by all,  
 " that Romulus instituted the *Comitia Curiata*, or the public Assemblies of  
 " the People, called to vote in their several Curiz; and that the matters subjected  
 " to their Decision, were the Choice of all the Magistrates, and the right of mak-  
 " ing Laws, War, and Peace. An ample Jurisdiction, and in the most important  
 " articles of Government; yet not wholly absolute, as Dionysius says, unless  
 " the Senate concurred with them. [Dionys. l. 2. c. 14.] But this method of  
 " transacting all the greater affairs by the PEOPLE, assembled in their Curiz,  
 " after it had subsisted through five successive reigns, was found to be inconvenient.  
 " For in Assemblies so constituted, where every individual had an equal vote, the  
 " issue of all deliberations must depend of course on the poorer sort, who are always  
 " the most numerous, though not always the most reasonable or incorrupt; so that  
 " SERVIUS TULLIUS, the sixth King, in order to correct this inconvenience, in-  
 " stituted a new Division of the People into Six Classes, according to a CENSUS, or  
 " valuation of their Estates: then he subdivided these Classes into 193 Centuries,  
 " and contrived to throw a majority of these Centuries, that is, 98 of them  
 " into the first Class of the richest Citizens: by which regulations, though every  
 " man voted now in his Century, as before in his Curia, yet, as all matters were  
 " decided by a majority of the Centuries, so the balance of power was wholly  
 " transferred into the hands of the rich, and the poorer sort deprived of their  
 " weight and influence in the Affairs of State: which wise institution was ever  
 " after observed through all succeeding ages in the elections of the principal  
 " Magistrates, and the determination of all the principal transactions of the  
 " Republic."

On this passage of the Doctor's Treatise I observe,

1. That he assigns for the King's institution of the *Comitia Centuriata*, a  
 MOTIVE not mentioned by either Livy or Dionysius, namely, that the transacting  
 business in the *Comitia Curiata*, where every individual had an equal vote, was  
 found inconvenient. Not a word of this is intimated by either of them. Dio-  
 nysius (who is the Doctor's diligent and faithful and exact and best Historian, and  
 undertakes to make his Reader acquainted with the true Causes of the Events  
 which he relates) tells us, that the King made this Regulation to quiet the discon-  
 tent of the Rich, because they were angry at his laying the chief burden of the  
 Taxes upon them. There was a great Injustice as well as Inconvenience in  
 exacting equal taxes from the poor and the wealthy, but no inconvenience (none  
 taken notice of, at least) in the people's giving their Voices either by *Curia* or *virum*.  
 When the Doctor says, the poorer sort are not always the most incorrupt, he seems

to



" And he formed a Confederacy or Association with the Latin States, artfully contriving to make them recognize ROME for the Head of the Union. " Though

to be thinking of popular Elections of Magistrates, but there is no proof of any such Elections in the times of the Kings. In the *Comitia* by Tribes, the votes of the Citizens are said to have been all of equal value, as in the *Comitia Curiata*; and yet Dionysius himself, on occasion of the Affair of Coriolanus, declares it to be his opinion, that the people's voting by Tribes was more reasonable than by Centuries, because every Roman had an equal right to be judge of a crime committed against the State.

2. The Doctor speaks of the *Assemblies of the People* in their *Curia*, as *Assemblies*, where every individual had an equal Vote. Now this must mean, either that the vote of each individual was equal in value to the vote of any other individual in the same *Curia*, or equal in value to the vote of any individual in the whole Assembly. If the former, the case was just the same in the *Comitia* by Centuries: the individuals of one and the same Century had all equal votes in their Century. If the Doctor means, that, in the *Assemblies* by *Curia*, the vote of each individual of a *Curia* was equal in value to the vote of any individual in the whole Assembly, this cannot be strictly true, unless we suppose that the 30 *Curia*, in King Servius's time, contained equal numbers of Citizens, which is in no degree probable. Were the Inhabitants of the City of Westminster to vote, in the election of their Burgesses, by Parishes (which are thought to answer to the Roman *Curia*) the vote of an Inhabitant of St. Martin in the Fields would not be equal in value to the vote of an Inhabitant of one of the very small Parishes: there would be as great a difference, as between a vote in a Century of the First Class, and a vote in a Century of the Fourth.

It is generally thought (and perhaps truly) that, " in the *Comitia Curiata*, the D. H. p. 87. " most Votes in each *Curia* went for the Voice of the whole *Curia*, and the " most *Curia* for the general Consent of the People." Nevertheless, that this was the Rule of proceeding, from the days of Romulus to the reign of Servius Tullius, is not said by LIVY: His word is VIRITIM [single votes] as we see in the passage above cited. And here I shall take notice of a great defect in the argument, used by Dr. Middleton in answer to Lord Hervey's Objection, above mentioned (p. 12, 13.) Lord Hervey had remarked, that Dionysius, without any mention of the People, ascribes to King Tarquin the Elder, as his proper act, the Creation of the 100 Senators *minorum gentium*.—" I answer (says the " Doctor) that after he had precisely and frequently explained the whole process of " filling up the Senate, might he not think it needless to repeat the Ceremony on " every occasion? Might he not imagine, that what he had before so particularly " described would be applied to every subsequent Case of the same kind?—Since " Dionysius then, the most accurate of the Roman Historians, and who treats the " particular question under debate more largely and clearly than any of them, is " expressly on my side &c."

Now it happens that this most accurate Historian, who is here said to have precisely and frequently explained the whole process of filling up the Senate, and to have particularly described the Ceremony, has mentioned only three instances of creating Senators; and in each of these instances the method of Proceeding is distinct and peculiar; and in no one of them are the Senators said to be chosen in an Assembly of the People, voting by *Curia*.

1. Of

*Observations on Dr. MIDDLETON's Treatise,*

" Though SERVIVS was now, by a long and undisputed possession, settled in the Throne, yet, as he heard, that *his not having been elected King by the PEOPLE*, was from time to time reproachfully objected to him by *Lucius Tarquinius*, he first secured the good will of the COMMONS, by sharing among them the Lands conquered from the Enemy, and then submitted his Title to the Decision of the PEOPLE assembled. No King had ever been chosen with so great unanimity as Servius now was. This Election, however, did not diminish Tarquin's hope of obtaining the Kingdom: For, knowing that the Distribution of the Lands among the COMMONS had been contrary to the will of the SENATE, he thought he had now a fair opportunity of inveighing against the King, and of raising his own credit with the FATHERS.

" To all violent measures that might forward his ambition he was incessantly prompted by his wife Tullia, a woman of a temper haughty and impetuous, like his own. Likeness of Character had occasioned an Intimacy between them, while *he* was the husband of her sister, and *she* the wife of his brother. This intimacy produced at length the secret murder of those who stood in the way of their closer connexion by marriage; a marriage which presently followed the wicked deeds, SERVIVS neither approving nor opposing it.

" From this time the King's old age and his government became daily more exposed to Insults, *Tullia* perpetually urging her husband not to let the murders, they had committed, prove

1. Of the 100 first senators of *Romulus*, he himself chuses *one*, and then, by his direction, each *Tribe* chuses *three*, and each of the 30 *Curiae* chuses *three*.

2. The *second* instance is that of the 100 *Sabine* senators; and these, the Historian tells us, were chosen by the *Curiae*: He says nothing of the *King*, or of the *Tribes*, or of an *Assembly of the People*. We should suppose, by Dr. Middleton's way of reasoning, that they were chose in the same manner as the 100 Roman senators, or perhaps as the 300 *Celeres* (according to D. H.) were chosen, i. e. an equal number by each *Curia*, not the whole number by an *Assembly of the Curiae*.

3. The *third* instance is that of the Alban Nobles admitted into the SENATE; and this was done by K. Tullus Hostilius, *after advising with the Senate, and taking their votes upon the Subject*. Now which of these methods are we to apply to the Case of the 100 new members added to the Senate by Tarquin the Elder?

" fruit-



" fruitless. She could not endure the mortifying thought, that,  
" after TANAQUIL, a *stranger*, had procured the Crown for her  
" husband and her son-in-law successively, SHE, *the daughter of*  
" *a Roman King*, should not have power to dispose of the King-  
" dom. TARQUIN, animated and impelled by the fury of this  
" woman, *went about to the Senators of his Father's Creation* (the  
" *Patres minorum Gentium*) putting them in mind of their obli-  
" gation to his Father, and requesting of them a suitable return.  
" The young men he allured by Gifts; and he every where  
" gained ground by Invectives against the King's Conduct, and  
" by promising mighty benefits from his own.

" When he thought he had a favourable opportunity of exe-  
" cuting his purpose, he rushed, on a sudden, into the Forum  
" with a band of armed men; and, while all the spectators were  
" struck with dread, seating himself on the Regal Throne,  
" sent a Summons to the *Senators* to attend KING TARQUIN.  
" They assembled without delay, some being prepared for this  
" Scene, others fearing lest their absence should be interpreted  
" into a Crime, astonished at the Novelty of the thing, and  
" looking upon SERVIUS as an undone man.

" TARQUIN breaks out into bitter revilings of the King, *That*  
" *he was a Slave and the Son of a Woman-Slave; that he had*  
" *possessed himself of the Kingdom, not after an Interregnum, which*  
" *custom required; not after holding the COMITIA, not by the*  
" *PEOPLE'S ELECTION, and a Confirmation of it by the SENATE,*  
" *but by the pure gift of a woman. That so born, and so created King,*  
" *he had ever been a favourer of mean fellows like himself, and, out of*  
" *hatred to others for their noble birth, had seized their Estates, in order*  
" *to bestow them on the most abject of Men. That the chief Burden*  
" *of the Taxes, which before had been equally borne by all, was now*  
" *laid upon the principal Citizens, and that he had instituted the*  
" *Census, to the end that the splendid Fortunes of the rich might be*  
" *exposed to the eye of Envy, and that he might have them ready to*  
" *give to beggars whenever he pleased.*

" While TARQUIN is yet speaking from the regal Throne,  
" SERVIUS, who had received quick Intelligence of what was  
" doing, comes to the Senate-house, and as he enters the door,  
" calls out aloud—*How hast thou, Tarquin, the audaciousness to*

"convene the SENATORS, and to sit in my Throne, while I am living?—It is my Father's Throne (answers the other fiercely) and better filled by his Son than by his Slave; who has too long licentiously insulted his Masters.

"The Partizans on each side raise a mighty shout, but are, otherwise, quiet Spectators of the Contest. Tarquin, younger and stronger than his Adversary, seizes him by the waist, and hurrying him along to the steps at the entrance of the Senate-house, casts him headlong from the top to the bottom. The King, much hurt and almost fainting, attempts, by the help of his domestics, to return to his Palace, but is overtaken and slain by some ruffians whom Tarquin had dispatched to complete the work." The Historian adds,

Liv. lib. 1.  
cap. 48.

"According to some Authors, SERVIUS, though he exercised sovereign Power with so much mildness and equity, yet, because it was sovereign Power in the hands of ONE \*, had thoughts of laying it down, and was meditating to set his Country FREE, when the wickedness of his own Family put an end to all his Schemes." [Id ipsum tam mite ac tam moderatum Imperium, tamen, quia unus esset, deponere eum in animo habuisse quidam auctores sunt, ni scelus intestinum liberandæ patriæ confilia agitantibus intervenisset.] For LIVY had no Idea of the PEOPLE's being † FREE and enjoying all the Privileges of a DEMOCRACY under the KINGS.

Vide supra,  
p. 83.

THIS Relation, however brief and imperfect, is at least consistent and credible, which cannot, I think, be said of the long Story told by the Greek Rhetorician.

LIVY, I confess, seems to have had a Partiality for Servius Tullius, on account of his Institutions and his later Designs, so favourable to public Liberty: and therefore to have thrown, over the worst parts of his Character and Conduct, a Shade which hides in some degree the Springs and Causes of those remarkable

\* i. e. of one perpetual Magistrate, not obliged to account for his Conduct; instead of a Succession of Magistrates, annual, and, of course, accountable.

† C. Mucius adolescens nobilis, cui indignum videbatur populum Romanum servientem, quum sub regibus esset, nullo bello nec ab hostibus ullis obsessum esse, liberum eundem populum ab iisdem Etruscis obsideri, quorum sæpe exercitus fuderit. Liv. l. 2. c. 12.



Actions and Effects which he has here recorded : and the Reader cannot easily discover them but by collating dispersed passages of the History, and by inference.

The Particulars, at which I hint, are these.

We see SERVIUS, without any title to the Kingdom, taking possession of it *by the Connivance of the FATHERS* [voluntate Patrum.] They are so desirous to have him at the Helm of the State, that they consent to his assuming the Regal Dignity and Power, without passing through any of the usual Forms : no previous *Interregnum*, no *Jussus Populi*, no *Patrum Auctoritas*. And yet we afterwards find these same FATHERS passive, at least, in the affair, if not abetting and assisting the younger TARQUIN in his Attempt upon SERVIUS's Crown and Life. How shall we account for this wonderful Change in the Disposition of the SENATE ? SERVIUS had been successful in War, he had enlarged the City, he had made the State more respectable by an Association which he had formed with the Latines, and his Government had ever been most equitable and gentle \*. He had indeed offended the SENATE by a Division of the conquered Lands among the COMMONS, which Lands, having been (probably) † usurped by some of the principal Senators, these were constrained by SERVIUS to restore them to the Public. But this Transaction was only ‡ a little before his De-thronement and Death ; and it is manifest that he had lost the good will of the SENATE before he gave them that recent Offence. For it was to secure to himself Protectors against his Enemies, that he divided among the COMMONS the conquered

\* Servius Tullius regnavit annos quatuor et quadraginta, ita ut bono etiam moderatoque succedenti regi difficilis æmulatio esset. Lib. 1. cap. 48.

† Ereptum primoribus agrum sordidissimo cuique divisisse, says young Tarquin in his *Invective* against the King. Lib. 1. cap. 47.

‡ I had not made this Reflection when I wrote my *Remarks on the History of the seven Roman Kings, occasioned by Sir Isaac Newton's Objections &c.* In p. xxiv (in the Note) where the Senate's countenancing Tarquin in his Treason is spoken of, it is imputed wholly to their Anger on account of the Lands. Nor had the Reasons, by which I shall presently endeavour to account for the Senate's conniving at Servius's possessing himself of the Kingdom upon the Death of Tarquinius Priscus, occurred then to my thoughts. In p. xxv I have supposed it to be in consequence of a Covenant between them and Servius, who, on his part, engaged to augment the power of the Nobles.

Lands; (a distribution, however, that even justice required.) LIVY, it is true, mentions only young TARQUIN, as giving occasion to this Act in favour of the COMMONS, by some words of disaffection, which were reported to SERVIUS. But we cannot imagine that TARQUIN, unsupported by the Senators, could ever have forced the King to so extraordinary a step, as, after many years reign, to remit his Crown to be disposed of by a Vote of the PEOPLE; and the very Gift itself, which he bestowed on the COMMONS, against the will of the SENATE, (*adversâ Patrum voluntate*) is a proof that he and the FATHERS were not then in friendship. To return therefore to the Question—*What was it that dissolved the good Intelligence between them, and made the SENATE pass from one extreme to another, in their disposition towards the KING?*

For the solution of this difficulty, a Conjecture, which perhaps may not appear improbable, will be offered to the Reader's consideration.

But here I must first observe (to the honour of Sir Isaac Newton) that though the Latine Historian, in compliance with the Vanity of his countrymen, leaves the Chronology of the Regal State of Rome just as he found it, and tells us that Romulus reigned 37 years, Numa 43, Tullus Hostilius 32, Ancus Marcius 24, Tarquinius Priscus 38, Servius Tullius 44, and Tarquinius Superbus 25; yet it is very evident, that he neither believed, nor meant that his intelligent Readers should think he believed, those Reckonings to be true. This I have elsewhere evinced by several Proofs, and we have in that part of the History which we are now upon, an additional and most remarkable Proof (which I had not then observed) of his Disbelief of the *long* Reigns of Tarquinius Priscus and Servius Tullius.

Remarks &c.  
p. xxii &  
xxxix.

Lib. i. cap. 35.

The Historian relates that, upon the death of King ANCUS MARCIUS, TARQUIN, a stranger from Tuscany, (by descent a Greek) whom ANCUS had by his will appointed Guardian to his two sons (of whom the elder was near fourteen) contrived to get the People assembled, as soon as possible, for the Election of a new King. Having sent the Boys a hunting, that they might be out of the way, he addresses himself to the Assembly in a premeditated speech, wherein, with great plainness, he makes it his humble Request that they will be pleased to chuse him to be their King.

He



He cites Precedents of Strangers \* chosen by the Romans to fill the Throne; and then, by setting forth his own personal great merit, convinces them that he is excellently well qualified to govern the State. As he had, by presents, (for he abounded in riches) gained the leading men both in the SENATE and among the COMMONS, he was elected without opposition. " *The Ambition* " (adds Livy) *which carried him to make suit for the Crown, did* " *not leave him when he was KING; and being not less attentive to* " *secure his own Sovereignty than to promote the Interest of the* " *Public, he † added to the SENATE a hundred members, who were* " *afterwards called Patres minorum gentium: A Faction that* " *would be firmly attached to the KING, by whose Favour they had* " *obtained their Seats in that Assembly ‡.* "

This Lession of a hundred new Senators is spoken of, as the first || Act of the elder Tarquin's Reign; and yet the younger TARQUIN, in the end of SERVIUS's Reign (that is, 82 years after) is represented as soliciting some of those very § Senators to favour his Pretension to the Crown. He reminds them of their Obligation to his Father, and hopes, from their Gratitude, a suitable Return. This, I say, is a Demonstration that LIVY could not really believe, that *Tarquin the elder* reigned 38 years, and *Servius Tullius* 44. He had just before declared it to be his Opinion, that the second TARQUIN was the SON, and not (as some thought) the GRANDSON of the first. And that LIVY believed the second Tarquin to be very young at the time of his Father's death, we need no other proof than his representing *Tanaquil* as inciting and urging *Servius Tullius* to possess himself of the Kingdom. *Tuum est*, inquit, *Servi; si vir es, regnum*—She does not so much as mention her Children on this occasion, and therefore we must suppose that

\* Tatius and Numa.

† N. B. According to Livy, the Senate, with this Addition, consisted of no more than 200, unless we reckon, as an Augmentation, the Alban Nobles admitted into it upon the Destruction of their City.

‡ Ergo virum, cetera egregium, secuta, quam in petendo habuerat, etiam regnantem ambitio est; nec minus regni sui firmandi, quam augendæ reipublicæ memor, centum in patres legit; qui deinde minorum gentium sunt appellati: *factio haud dubia Regis, cujus beneficio in curiam venerant.* Lib. 1. cap. 35.

|| Dionysius agrees with Livy in this particular. D. H. p. 199.

§ *Circumire et præbentem minorum maximæ gentium patres, adnuere paterni beneficii, ac pro eo gratiam repetere.* Lib. 1. cap. 47.

they were not of an age to govern. At the same time, it is incredible that *Tanaquil* should totally forget her two sons; so that her Purpose, in engaging *Servius* to assume the Government, was, in all probability, to secure the Kingdom to *them*.

This is expressly asserted by *Dionysius* [who, had the rest of his Story been of a piece with this, would have been more worthy of attention than he is.] But (as was hinted before) the Latine Historian seems to have intended to cover the Blemishes in *SERVIVS*'s Conduct: and it is, probably, for this reason that he industriously avoids mentioning *TARQUIN*'s sons, till they are marriageable. He never speaks of *SERVIVS* as their Guardian; which nevertheless that he was, may be well *inferred* from some passages of the History. For there we read (as has been already observed) that *TARQUIN* the elder was left Guardian to the sons of *ANCUS*, who were not then at the age of Puberty: that these sons were afterwards full of Indignation at the thoughts of their having been deprived of their Father's Kingdom by the Fraud of their Guardian \*; [*Anci filii duo, etsi antea semper pro indignissimo habuerant, se patrio regno tutoris fraude pulsos &c.*] and that *Servius Tullius* was apprehensive, lest the like Resentment against himself should take place in the minds of *Tarquin*'s sons [ne qualis *Anci liberum animus adversus Tarquinium fuerat, talis adversus se Tarquinii liberum esset &c.*]

Liv. lib. 1.  
cap. 34.

L. 1. c. 40.

L. 1. c. 42.

This seems to intimate, that *SERVIVS* was in the same situation with regard to the Sons of *TARQUIN*, as *TARQUIN* had been with regard to the Sons of *ANCUS*.

And, that the children of *TARQUIN* were very young, and that *SERVIVS* was their Guardian, may, I think, be well inferred from one of the Reasons that induced the sons of *Ancus* to kill *TARQUIN* rather than *SERVIVS*, namely, That, should they cut off *SERVIVS*, *TARQUIN* would, probably, bequeath the Kingdom to whatever other Person he should chuse, to be his Son-in-law. *Servio occiso, quemcumque alium generum delegisset, eundem regni heredem facturus videbatur.* Now since *TARQUIN* had two Sons, and yet the

\* It is remarkable that, as *Livy* never speaks of *Servius*'s being Guardian to *Tarquin*'s Children, so *Dionysius* is wholly silent concerning *Tarquin*'s being Guardian to the Sons of *Ancus*. The Greek Antiquary conceals the Fraud of his Royal Greek Knave, as *Livy* does that of his favourite *Servius*.



Conspirators imagined, he would certainly leave the Kingdom to a Son-in-law, does not this imply that the Sons were too young to reign? And if TARQUIN believed he had it in his power to make the Crown pass, after his death, to a Successor of his own appointing, is it natural to believe, that he totally forgot his own Sons? Doubtless his Scheme was, in case of his dying before his Sons were old enough to govern, that, by the aid of the Senators, the majority \* of whom were his own creatures, SERVIUS should take possession of the Kingdom and hold it, till the elder of his Sons was of an age to perform the functions of a King.

And that SERVIUS did, in fact, take possession, under covenant with the Senators and Tanaquil to resign it at a proper time, to one of TARQUIN's Sons, seems highly probable, for this Reason, That no other Cause but such a Covenant can be assigned for SERVIUS's not being elected King, and for the SENATE's Connivance at his reigning without such Election. Why was not an Interregnum suffered to take place according to custom, that so an Interrex might hold an Assembly of the People to elect SERVIUS to the Throne? What Opposition could he or the SENATE apprehend? Just before TARQUIN's death, there was no man so highly honoured and esteemed as SERVIUS, by both SENATE and PEOPLE. Duode- L. 1. c. 40. quadragesimo ferme anno, ex quo regnare cœperat Tarquinius, non apud Regem modò sed apud Patres, Plebemque longè maximo honore Servius Tullius erat.

It is manifest then that the Senators, though willing to let SERVIUS exercise the regal Power and have the Title of King, were unwilling to have him elected in Form to fill the Throne. And how shall we account for this, but by supposing that the greater Part of them being the Creatures of the elder Tarquin [Factio haud dubia regis] desired to preserve the Crown to his Family? To which end they would have SERVIUS (on whom they believed they might depend, because of his extraordinary Obligations to the late King and to Queen Tanaquil) hold the Reins of Government, till Lucius Tarquinius should be old enough to take them into his hands; but no longer. And it is highly probable (as I

\* If Tarquin reigned only six or seven years, a considerable number of the members, besides the *Patres minorum gentium*, must have been brought into the Senate by his favour.

said before) that SERVIVS engaged his Promise both to them and to the Queen to resign the Crown to her son LUCIVS. The Senators, after some time, perceiving that SERVIVS (contrary, perhaps, to his own original purpose) had resolved to retain his Royalty to the end of his life, took part with young TARQVIN in the \* Plot to dethrone him. And it is not incredible that SERVIVS knowing,

Prefixed to the  
Roman Hist.  
in 4to. vol. i.  
3d edition.

\* This Plot was probably formed and executed very soon after Tarquin became old enough to govern: for that Servius reigned 44 years, is, beyond Controversy, a mere Fable. If there were no other Reason to make us doubt of the Truth of that Reckoning, this Consideration alone would be sufficient, that SERVIVS had not, at the time of his Debauchment, a stronger Party in the Senate than we find he had to support him. For almost the whole number of the Senators must have been of his own Creation, if it was the Prerogative of the King to create Senators: and if we suppose, as the two Doctors do (contrary to all probability) that the People elected the persons who supplied the vacancies in the Senate, still Servius had influence enough upon the Multitude to engage them to chuse such as he should recommend. In the *Remarks on the History of the seven Roman Kings* (p. xxiv) it is supposed that he might reign 16 or even 20 years, because Valerius Maximus reports, that there were four Lustrums in his Reign: but as Valerius is a great dealer in Fables, and as there is no other Authority for the Fact, one may, without being very incredulous, take the liberty to doubt of it. And supposing that Servius mustered the Citizens, and made a valuation of their Estates four times, closing those Surveys with so many Lustrations, it will not follow that he reigned either 20 or 16 years, if what Dr. Middleton asserts concerning the word *Lustrum* be well founded. In p. 68 of his *Treatise*, he writes thus: "The Office of CENSOR, at its first Institution, was designed to be *quin-*  
" *quennial*, or to continue in the same hands for *five years*; but this length of  
" Magistracy, unknown before to Rome, was reduced soon after to one year  
" and an half by a Law of Mamercus Æmilius, the Dictator."—And in p. 103,  
" The Censors continued in their office for eighteen months, and if we suppose  
" them to have been created only every five years, the office must lie dormant  
" for three years and an half. This is agreeable to what the generality of writers  
" have delivered to us of the CENSUS; that it was celebrated every *fifth* year:  
" and as it was accompanied always by a *lustration* of the People, so the word,  
" LUSTRUM, has constantly been taken, both by the *Ancients* and *Moderns*, for a  
" term of FIVE YEARS. Yet, if we enquire into the real state of the case, we  
" shall find no good ground for fixing so precise a signification to it; but, on  
" the contrary, that the *Census* and *Lustrum* were, for the most part, held irre-  
" regularly and uncertainly, at very different and various intervals of time, as the  
" particular exigencies of the State required. This is evident, not only from  
" the testimonies of the old writers, but from authentic records and monuments  
" of the fact, the OLD FASTI, inscribed on marble, and still preserved in the  
" Capitol of Rome; exhibiting a succession of the Roman Magistrates, with a  
" summary of their acts, from the earliest ages of the Republic.

" For



knowing, by the murderous Practices of his Son-in-law, the wicked Disposition of his Heart, might, for the sake of his Country, and partly

" For example, *Servius Tullius*, who first instituted the *Census* and *Lustrum*, and afterwards held four of them, began to reign A. U. 175, and reigned 44 years. *Tarquinius Superbus*, who succeeded him, held no *Census* at all.

" The Consuls *P. Valerius* and *T. Lucretius* revived the Institution of *Servius*, and held the fifth *Census* A. U. 245; and the *Capitoline Marbles*, which are defective through the SEVEN FIRST LUSTRUMS, mark the EIGHTH to have happened A. U. 279; so that the THREE FIRST, which were held by the CONSULS, carry us through an interval of thirty-four years.

" The CENSORS were created A. U. 311 [310, Fast. Cap.] in which year they celebrated the eleventh *Lustrum*; which gives also near the same interval to the three last, which had been held by the Consuls.

" The twentieth *Lustrum*, according to the *Capitoline Marbles*, falls A. U. 390: whence we see, that, under the CENSORS, who were created for the very purpose of administering the *Census* and *Lustrations* of the People, yet the nine first of their *Lustrums*, one with another, take up, each of them, very near nine years.

" The last *Lustrum*, during the Liberty of the Republic, was held by the Censors *Appius Claudius* and *L. Piso*, A. U. 703, and was the 71st: so that if we compute from the eleventh, or the first held by the Censors, to the last by *Appius Claudius*, the intervening sixty will, each of them, contain about six years and an half.

" This is the real state of the Case, as it is deduced from the most authentic Records: from which we see, that though time and custom have fixed the notion of a *Quinquennium*, or term of five years, to the word *Lustrum*, yet there is no sufficient ground for it in fact or the nature of the thing."

I said, that, if what Dr. Middleton asserts, concerning the word *Lustrum*, be well founded, it would not follow from *Servius's* holding four *Lustrums*, that he reigned even 16 years; because, according to the Doctor, the notion of a term of five years has been fixed to the word *Lustrum*, without any sufficient ground for it in fact. But is it possible for any Reader to acquiesce in this Assertion? Is it credible that, without any ground in FACT (for doubtless there is none in the nature of the thing) the word LUSTRUM should have been constantly taken, both by the ancients and moderns, for a term of FIVE YEARS? Yet, if it had a foundation in FACT, the FACT must have been before the Creation of the first Censors (in 310) for the Doctor has shewn from the *Capitoline Fasti*, that the *Census* and *Lustrum* were irregularly held, after that time; and that the nine first of the *Lustrums* held by the CENSORS take up each of them very near NINE years. In what period then shall we seek for the FACT, on which the notion was founded? Livy places the TENTH *Lustrum* in the Consulship of *Fabius* and *Cornelius* [Year of Rome 294, Fast. Cap.] seventeen years before the eleventh in 310, and the Consuls neglecting (on account of other occupations) the business of the *Census* for so long a time, is given as the reason for creating a new Magistracy expressly for that Affair.

Dr.

partly from Resentment, form a Scheme to prevent his succeeding to the Throne; and this, by abolishing the Regal Office, and setting

Dr. Middleton has observed (as we see above) " that the *Capitoline Marbles*, " which are defective through the SEVEN FIRST *Lustrums*, mark the EIGHTH " to have happened A. U. 279, so (adds the Doctor) that the THREE FIRST " which were held by the Consuls, carry us through an interval of 34 years." But, in making this Inference, the Doctor takes for granted, that P. Valerius and T. Lucretius (Consuls in the second year of the Republic) A. U. 245, held the FIFTH *Lustrum*, and that King Servius Tullius had held FOUR: Facts that are by no means sufficiently attested. For, that Servius Tullius performed the *Lustration* four times, is one of the marvellous things of Valerius Maximus, on whose sole Authority, it has been received; and it is not more probable, than that Servius reigned 44 years, which is intimated by Valerius in the same passage. His words are, *In Ser. autem Tullio fortuna præcipue vires suas ostendit: vernam huic urbi natum regem dando: cui quidem DIUTISSIME imperium obtinere, quater lustra condere, ter triumphare contigit.*

Val. Max.  
lib. 4. cap. 3.

Pigh. Ann.  
vol. i. p. 48.

p. 113.

Pighius imagines, he can collect (he does not say how) from the Fragments of the *Capitoline Marbles*, that Servius performed four *lustrations*; but, in reality, Valerius is his only Authority; the Marbles have nothing to his purpose, as his own words in another place declare. *Lustrum, quod hoc anno [279] conditum in urbe fuit, ordine OCTAVUM esse monstrant Capitulina Fragmenta.* Superiora verò septem in iis temporum injuriâ periere, quæ nos ex Dionysio, Valerio Maximo, et aliis auctoribus in tabula suis locis reposuimus.

Not a word is there in either LIVY or DIONYSIUS of any more than one *Lustrum* in the time of King Servius Tullius; and as to the *Capitoline Marbles*, the first *Lustrum*, there marked, is the EIGHTH (as Pighius observes) and this is A. U. 279.

Dionysius tells us, that the Institution of the CENSUS, after it had been totally neglected through all Tarquin's Reign, was revived by the Consuls Valerius and Lucretius in the second year of the Republic, A. U. 246 [245, according to the Cap. Fast.] But I am inclined to think, that the Greek Historian [the only voucher of the fact] was somehow led into a mistake by the names of the Consuls: for these same men were again colleagues in the Consulship A. U. 249, the fifth year of the Republic, according to LIVY; the sixth, according to DIONYSIUS [who reckons one Consulship, which is not mentioned by Livy, namely, that of Sp. Lartius and T. Herminius, which he places in 248.] It is not improbable, that Valerius and Lucretius, A. U. 249, did revive the Institutions of the *Census* and *Lustrum*. But it is highly improbable, that in a time of so much hurry, and distraction and danger, as was the Second year of the Republic [*Parasenna* at the Gates of Rome, according to Livy] the Consuls should employ themselves in a business proper only to a season of quiet and leisure. And what makes it more easy to believe, that Dionysius mistook in this particular, is, that Livy speaking of the earliest times of the Commonwealth, writes thus.—" In some Authors I find that the Battle of the Regillus happened this " year [257. Fast. Cap.] and that A. Posthumius, because the fidelity of his " Colleague [Virginus] was suspected, abdicated the Consulship, and was made " Dictator. The remoteness of those Times, and the antiquity of the Authors

Liv. lib. 2.  
cap. 21.

" who



setting the Romans entirely FREE: which FREEDOM he could not mean to effect by introducing an ARISTOCRACY, such as took place

"who have written of them, and who differ concerning the succession of the Magistrates, and the order of the Events, make it very difficult to say with certainty what was done in each year, and who were the Consuls."

Now supposing, that the *Census* and *Lustrum* were held for the first time (after the Regifuge) by *Valerius* and *Lucretius*, A. U. 249, and that this *Lustrum* (which is only by the *Moderns*, not by *Dionysius*, nor any ancient Author, called the *Fifth*) was in reality the *Second*, King *Servius Tullius* having held but one, we shall then have sufficient ground in FACT, for fixing the notion of a *Quinquennium* to the word *Lustrum*: For the SEVEN first *Lustrums*, under the CONSULS, will carry us through an interval of exactly 35 years, reckoning these years from the beginning of A. U. 245, where both *Dionysius* and *Livy* place the Beginning of the Commonwealth.

In the fifth year of the Republic, A. U. 249 — 2d *Lustrum*.

254 — 3d

259 — 4th

264 — 5th

269 — 6th

274 — 7th

279 — 8th.

This last, in 279, is the first that remains marked on the *Capitoline Marbles*, and it is marked as the EIGHTH.

The first *Lustrum* mentioned by *Livy*, as performed under the CONSULAR Government, is in the Magistracy of *Q. Fabius* and *T. Quinctius*, A. U. 288 [Fast. Cap.] and this was doubtless the NINTH.

For the next *Lustrum*, by him mentioned, he calls the TENTH, and it is in the Consulship of *Q. Fabius* and *C. Cornelius*, A. U. 294 [Fast. Cap.]

And he relates, that in the Consulship of *M. Geganius Macerinus*, and *T. Quinctius Capitolinus*, A. U. 310 [Fast. Cap.] the first CENSORS were created, and expressly for the business of the CENSUS, because it had been too long neglected. [It was 17 years since the last, in 294.]

If a Reader of the more learned and inquisitive sort should ask, Why *Livy* does not mention any *Lustrum* (under the Consuls) till he comes to the Consulship of *Q. Fabius* and *T. Quinctius*, A. U. 288, when the NINTH *Census* was held? the natural answer would be, that, probably, he had found no authentic Record of the numbers polled at any of the *Musters* prior to the NINTH; [which ninth, I take to have been the first that was held irregularly (i. e. out of due time) the beginning of that Disorder which furnished a Pretence for erecting the Office of CENSOR: on which subject *Livy* is copious and distinct enough.]

If the Enquirer should not be satisfied with this Conjecture, I shall only say, that *Pighius* does not make so good a one, when he imputes to *Haste* *Livy's* silence concerning the *Lustrums* that preceded the ninth. Speaking of a *Lustrum* which (according to *Dionysius*) was in the Consulship of *Cassius* and *Cominius*, A. U. 261 [Fast. Cap. 260] he writes thus. "Hoc *Lustrum* fuisse VII ex sequenti octavo constabit. *LIVIVS* autem ad alia festinans recentiora, hujus vetusta Historie potius (si dicere licet) partem, *Census* et *Lustra*, e quibus statum

place immediately after the DEATH of TARQUIN the PROUD, fourteen years after his EXPULSION. It could hardly be the intention

"statum Reip. ac incrementa, vel damna in primis cognoscere est, ut et alia "magistratum acta plurima, consulto transfiliisse videtur." Had HASTE been the cause of LIVY's not mentioning the *Musters* that preceded the *ninth*, the same *haste* would probably have made him pass over the *ninth* and *tenth*, and (if not the *eleventh*, because the first Censors were then created) the many that were subsequent to the *eleventh*, till the year 667; for almost all which *Musters* LIVY is the chief, if not the sole voucher, as will appear by the following Series of *Musters*, with the Authorities, inserted by Mr. Moyle in his Essay upon the Roman Government.

Moyle's Works, vol. i. p. 124, 5, 6. "The vast Increase of their Numbers [the numbers of the Roman Citizens] will best appear by presenting the Reader at one view with all the *Musters* or Surveys of their Citizens which are extant, and in the Order they were taken down, as low as the Time of SYLLA."

| Anno Urbis<br>conditæ. | Fighting<br>men. | Authors.           | Anno Urbis<br>conditæ. | Fighting<br>men. | Authors.           |
|------------------------|------------------|--------------------|------------------------|------------------|--------------------|
| 1                      | 3,300            | Dion. l. 2. p. 78. | 506                    | 251,222          | Liv. Epit. l. 19.  |
| 37                     | 47,000           | — l. 2. p. 89.     | 512                    | 260,000          | Euseb. Chron.      |
| Under Serv.            |                  |                    | 533                    | 270,213          | Liv. Epit. l. 20.  |
| Tull.                  | 84,700           | — l. 4. p. 225.    | 546                    | 137,000          | Liv. l. 27. c. 36. |
| 245                    | 130,000          | — l. 5. p. 293.    | 549                    | 214,000          | — l. 29. c. 37.    |
| 256                    | 150,700          | — p. 338.          | 560                    | 243,704          | — l. 35. c. 9.     |
| 260                    | 110,000          | — p. 416.          | 565                    | 258,308          | — l. 38. c. 36.    |
| * 279                  | 103,000          | — p. 594.          | 574                    | 273,244          | Liv. Epit. l. 41.  |
|                        |                  |                    | 580                    | 269,015          | Liv. l. 42. c. 10. |
| 288                    | 124,215          | Liv. l. 3. c. 3.   | 584                    | 312,810          | Liv. Epit. l. 45.  |
| 294                    | 132,409          | — c. 24.           | 589                    | 337,452          | Plut. in Æmil.     |
| 361                    | 152,580          | Euseb. Chron.      | 594                    | 328,314          | Liv. Epit. l. 47.  |
| 410                    | 160,000          | Ibid.              | 599                    | 324,000          | — l. 48.           |
| 435                    | 250,000          | Liv. l. 9. c. 19.  | 606                    | 322,000          | Euseb. Chron.      |
| 460                    | 262,000          | — l. 10. c. 47.    | 611                    | 328,342          | Liv. Epit. l. 54.  |
| 464                    | 273,000          | Liv. Epit. l. 11.  | 617                    | 323,000          | — l. 56.           |
| 474                    | 278,222          | — l. 13.           | 622                    | 313,822          | — l. 59.           |
| 478                    | 271,224          | — l. 14.           | 628                    | 390,736          | — l. 60.           |
| 489                    | 292,224          | — l. 16.           | 638                    | 394,336          | — l. 63.           |
| 502                    | 297,797          | — l. 18.           | 667                    | 463,000          | Euseb. Chron.      |

\* Eighth Lustrum, according to the Fast. Cap.

N. B. With regard to the *Musters*, for which Dionysius is here quoted, Mr. Moyle has given the dates of them, not according to *Dionysius* himself, but according to the Fasti Cap., where the year 245 is the second year of the Republic, and the second Consulship of Valerius. Dionysius says expressly, that the Regal State lasted 244 years: so that the second year of the Commonwealth is, with him, 246, when Valerius is Consul the second time. So likewise the year of the Consulship of Furius and Manlius, in which the Fasti place the eighth Lustrum, is, according to Dionysius 280, not 279. Not having the Edition



intention of *Servius* to transfer to his mortal Enemies (the Senators) the absolute Government of Rome. *Insignis hic \* annus* \* U. C. 258.  
est Fast. Cap.

of D. H. which Mr. Moyle made use of, I have given the pages as they are numbered in the inner margin of Hudson's Edition.

" From this *Scheme* it is evident, that the People multiplied very fast under Moyle, p. 126.  
" the *KINGLY GOVERNMENT*; that their stock was very much diminished  
" under the beginning of the *ARISTOCRACY*, and increased prodigiously after  
" the *COMMONWEALTH* became equal: for from the general survey, in the  
" year 410, not long after the last \* change of their Government, to the year \* In 386.  
" 435, we find an increase of 90000 Inhabitants."

That the last particular here mentioned, I mean the *prodigious Increase of the People after the Commonwealth became equal*, is well founded, no body can doubt; but it is not so clear from the *SCHEME*, that the People multiplied *very fast* under the *Kingly Government*, unless by the *Kingly Government* be understood the Reigns only of *Romulus*, *Tullus Hostilius*, and *Tarquin the Proud*. But it is to be noted, that the musters set down in this *Scheme*, to the year 279, inclusive, are all (except that in the Reign of *Servius Tullius*) given upon the Authority of *DIONYSIUS* alone; who is not, of all the Roman Historians, the most faithful and exact, but the most inconsistent and the least deserving of credit.

Let us examine the Account.

*ROMULUS* at his death left near 47000 Roman Citizens, i. e. 46000 foot, and D. H. p. 89. not many less than 1000 horse.

*NUMA* had no wars. The Romans, in his time, kept holiday, lived tame, and bred. And though this King was the Author of a Reformation in Religion, and introduced a new System of Theology, yet no Citizen could be induced, by scruple of Conscience, to forsake the City. There was no Act of Uniformity.

" *NUMA* (says Mr. Moyle) instituted only two Articles of Faith." [Cic. de Leg. Moyle's Works, vol. i. lib. 2. cap. 6.] p. 13.

" 1. That the Gods were the Authors of all Good to Mankind.

" 2. That to obtain this Good, the Gods were to be worshipped, in which  
" Worship the chief of all was to be innocent, good, and just." [Dionys. Halicarn. p. 123.]

" —As for the particular forms of Divine Worship, he instituted a Ritual, P. 15.  
" which directed the Priests in the solemn Ceremonies and Services of Religion,  
" without denying a Toleration of other Forms.—In the particular Forms of P. 19.  
" Divine Worship he allowed a general Liberty of Conscience."

There is no reason then to imagine a diminution of the Citizens in *NUMA*'s time: and, if he added, as *Dionysius* reports, the Hill *Quirinalis* to the City, there is ground to believe, that the number of the Inhabitants was, during his Reign, augmented.

*TULLUS HOSTILIUS*, by removing the Inhabitants of *ALBA* to *ROME*, DOUBLED the number of Roman Citizens. This is said by both *Livy* and *Dionysius* †: so that we cannot well suppose their number, at the time of *Tullus*'s death, to fall short of 100,000.

† Liv. lib. 1. cap. 30. Roma interim crescit Albae ruinis. Duplicatur Civium numerus. D. H. p. 174. Τῇ τῇ Ρωμαίων ἀναστὰς διπλοῦντος ἀπλοῦντος οὐκ ἔστι τῇ πρῶτης, ἢ αὐτῇ Ἀλβανῶν πολλοὶ προσέτελλον.

Liv. l. 2. c. 21. *est nuncio Tarquinii mortis.—Eo nuncio erecti PATRES, erecta PLEBES. Sed PATRIBUS nimis luxuriosa ea fuit lætitia: PLEBI, cui*

ANCUS MARCIUS was prosperous in war, and added Mount *Aventine* to the City, whence we may conclude, that the Inhabitants were still increasing in number.

TARQUINIUS PRISCUS prospered likewise in all his Wars, which were many: nevertheless, as he did not enlarge the City, but confined himself to beautifying it, we shall not insist upon an Increase of Roman Citizens in his time. But his successor,

SERVIUS TULLIUS enlarged the City considerably, by adding to it the Hills *Viminalis* and *Esquilinus*: so that we might hence fairly conclude, there had been a great Increase of Inhabitants since the time that King Ancus took in Mount *Aventine*: And this increase is intimated by Livy, l. 1. c. 44. *And yet, when*

\* D. H. p. 225. SERVIUS comes to muster his Romans, he finds no more than 84700\*.

But, at the Muster made the year after the Expulsion of Tarquin the Proud, the Citizens are found to be increased to 130,000. A. U. 246.

In the ten following years they augment to 150,700, (the number mustered A. U. 256, according to Dionysius.)

But, in the next five years, they fall to 110,000, (the number in A. U. 261.)

And in 19 years more, to 103,000, (the number A. U. 280.) [279, Fast. Cap.]

With regard to these reckonings (which I leave to the Reader's consideration) I shall only observe,

1st. That though it be not unlikely, that a Muster in 261 should fall considerably below the Muster taken five years before, because of the cruel oppressions, which the Debtors, in the interval, suffered from their Creditors, cruelties which gave occasion to the Secession in 260: yet, after the Debts were cancelled, and the *Seceders* returned, and the *Commons* had got protection by the Creation of the *Tribunes*, it does not seem probable that the number of Citizens, in the year 261, should be less by 47700, than in the year 256.

2. That though Dionysius talks of *Censorian Registers* [τιμωτικὰ γράμματα] from whence he took the number of the Citizens, mustered at the Institution of the CENSUS (and from whence we might, therefore, perhaps imagine, that he took the other Musters, by him mentioned) yet there is no reason to believe, that, in his time, there were any Records, deemed authentic and coeval with the earliest Musters. With such Records before him, how came so *exact* an Historian not to mention more than one *Census* in SERVIUS's time, if that King held *four*? and if he held but one, why does the *exact* Historian mention no more than *three*, between that One, and the EIGHTH? And why does he say nothing of the NINTH? Why is he silent about the TENTH, till he comes to the Institution of the CENSORS office, 17 years after the holding of that TENTH? And why does he not say, to what number the Citizens amounted when that *Tenth* muster was made? The truth is, the notion, so generally entertained, of Dionysius's *exactness*, is totally without foundation. He does not seem to have had any intention to be *exact*, though (perhaps the more easily to impose on his Grecian readers) he sometimes affects an air of being very particular and circumstantial; as in the Story of the Plot\* of the *Tribunes* against the *Senata* and *Knights*, in the year 293, a story which, without question, he either invented himself,

\* See Rom. Hist. 4to, p. 301 of vol. 1. 3d edit.



*cui ad eam diem summa ope inservitum erat, injuriæ à PRIMORIBUS fieri capere.*

THE Sum then of LIVY's account of SERVIUS's accession to the Throne, and of his Dethronement, seems to be, that Both were effected by the *Faëtio haud dubia Regis Tarquinii Prisci*, the strong Party which the Elder Tarquin had created, to himself

himself, or picked up in conversation with those Intelligent persons whose Company *Vide supra, he frequented, in order to qualify himself to write the Roman Antiquities.* The P. 133. Subject we are just now upon furnishes one remarkable proof of his careless manner of writing History. We have seen, that, according to him, the number of Citizens mustered in the year 256 was 150,700; and yet he makes Appius Claudius say to the Senate five years after (in 261) *That the number of Citizens, counted at the last Muster, was 130,000.*

LIVY, more frank and ingenuous than the Greek writer, does not pretend to know the exact number of Romulus's Soldiers, either at the beginning or at the end of his Reign. The first Muster, which he mentions of Citizens, fit to bear arms, is that at the Institution of the CENSUS by King Servius; and he says the number was 80000, and he gives *Fabius Pictor* for his Authority. *Millia Lxxx L. 1. c. 44. eo lustrum civium censa dicuntur. Adjicit scriptorum Antiquissimus Fabius Pictor, eorum qui ferre arma possent eum numerum fuisse.* The next Muster, mentioned by him, is the NINTH, which was taken in the year 288; i. e. 44 years after the Regifuge, and 28 years after the Creation of the First Tribunes of the Commons: and the number said (probably by *Fabius*) to be then found, upon the muster, was 124,214. [*Census deinde actus, et conditum a Quintio Lustrum. Censa L. 3. c. 3. civium Capita Centum quatuor et viginti millia ducenta quatuordecim dicuntur, præter orbos orbasque.*] And this Increase of Citizens is not only credible, but very probable. Livy is brief, but there is nothing, in what he says of the Musters, that is against probability; whereas Dionysius's account, containing more particulars, has no appearance of truth.

From the foregoing Observations concerning the CENSUS, I would have the Reader (if he pleases) infer,

1. That there was sufficient ground in FACT for fixing the notion of a Term of five years to the word *Lustrum*: For that there is good reason to believe, the seven first Lustrums after the Establishment of the Commonwealth were regularly held every five years. We have seen that there is no good Authority for King Servius's FOUR Lustrums, nothing but the words of *Valerius Maximus*, of whom Dr. Middleton says, that it seems to be his view, in the Collection of his Midd. Life of Stories, to give us rather what is strange than true. And surely the very fixing Cic. vol. i. the Notion of a term of five years to the word *Lustrum*; and the Intention, at P. 517. the first institution of the office of CENSOR, that it should be *Quinquennial*, afford a Presumption that SERVIUS TULLIUS had ordained a Renewal of the CENSUS every five years, and that the CONSULS followed that direction for some time after the commencement of the Republic.

2. That Servius Tullius having held the CENSUS but once, it is highly probable that his Reign was far short of 44 years; and consequently that the Ancient Chronology of the Regal State of Rome needs Reformation.

and

*Observations on Dr. MIDDLETON's Treatise,*

and his family, in the SENATE; and that the FATHERS had a two-fold Motive to destroy SERVIUS, namely, the Interest of the *Younger Tarquin*, and the Recovery of their own Credit and Authority, much weakened during this King's Reign, and in danger of being still more reduced.

In this Representation there is nothing but what is consistent, conceivable, and credible. Let us now see whether the same can be said of Dionysius's Account of the Transactions and Events of these times.

*A Summary of DIONYSIUS's History of King Servius Tullius.*

DIONYSIUS differs essentially from LIVY, with regard to SERVIUS's first assuming the Royalty. He tells us, "that SERVIUS, after the Publication of TARQUIN's death, openly and avowedly retained the Government, as Guardian to TARQUIN's Children. But that the *Patricians*, (he means the SENATE) much dissatisfied with his Presumption, his Contempt of their Authority, and of the Laws, held frequent Consultations about Measures to dethrone him, and create a new King in legal form \*." That

\* Dr. Chapman, in order to reconcile the differing accounts which Livy and Dionysius give of Servius's accession to the Throne, makes a Distinction between *Governing* and *Reigning*. After saying, in his text, that all the Successors of Romulus "were confirmed by the SENATE, as well as *elected*, at first, by the PEOPLE, the last of them only excepted," he adds, in the Margin, the following Note.—"Perhaps an exception ought to be made with regard to SERVIUS TULLIUS, who *reigned* without the Consent of the *People*, according to LIVY; without that of the *Fathers*, according to DIONYSIUS. The Fact was this. SERVIUS, as the latter informs us, *took upon him the Government*, at first, in the quality only of Guardian to his Predecessor's Children, but afterwards prevailed upon the PEOPLE to make him KING, contrary even to the sentiments of the FATHERS: Now, if we suppose, that he acted, at first, upon no other authority, than that of the *Senate*, as very probably he did, he might *begin to govern*, as LIVY says, without the Consent of the *People*; and yet *begin to reign*, without that of the *Fathers*, as DIONYSIUS affirms he actually did."

This Distinction, though very ingenious, labours under some difficulty. For if Servius, till the People elected him, in *form*, to the Throne, did not *reign*, because that *Form* had been wanting; neither could he be said to *reign*, after his Election;



" That SERVIVS, receiving intelligence of their Design, turned  
 " his thoughts to gain the People to his interest. He calls  
 " them to an Assembly, and there [having placed by his side  
 " the two † sons of TARQUIN] in a long Harangue, sets forth,  
 " that, for innumerable Favours which he had received from the  
 " late King, he was under the most indispensable Obligation to  
 " protect his Children, whom their dying Father had recom-  
 " mended to his care: that he finds ‡, there is a Plot laid to D. H. p. 214.  
 " deprive these Children of the Kingdom, and give it to others:  
 " that he had not taken possession of it for himself, but to preserve Vide supra,  
 " it for the Family of Tarquin. He reminds the Assembly of the P. 94

Election: seeing the Fathers did never *fieri auctores*, did never give the customary confirmation.—*ἡ [βουλὴ] οὐκ ἐξέτισεν επικυρῶσαι τὰ τῶ δημοτικῶς πλῆθος, ὡς περ αὐτῇ ποιεῖν ἔθος*—Vide supr. p. 108. Which Confirmation, when the PEOPLE had elected, is held by Dionysius to have been constitutionally necessary to the Creation of a King.

It is to be noted, that our exact and faithful Historian has no fixed method for raising a man to the Throne. According to him, NUMA was elected by the Curia; and the Patricians [i. e. the Senate] confirmed the election.—*τῶν πατρικίων επικυρῶσαντων τὰ δοξαντα τῷ πλῆθει*. p. 122, 123.

But when ANCUS MARCIUS is made King, the SENATE elects, and the PEOPLE confirm.—*ἐπικυρῶσαντος δὲ τῶ δήμῳ τὰ δοξαντα τῇ βουλῇ*. p. 177.

Yet, speaking of the unprecedented method by which Servius Tullius acquired the Crown, he says, that, in former days, the manner of proceeding, on the demise of a King, was this: *The People gave the Senators power to establish what form of Government they liked best* [which seems to be a pure Invention of his own.] The SENATE appointed INTER KINGS; and these choosing some excellent Person (a Native of the Country, or a Roman Citizen, or perhaps a Foreigner) constituted him KING. If the SENATE approved of their Choice, and it was confirmed by the Votes of the PEOPLE, and by good Omens, that person took possession of the Throne. But if any one of these were wanting, another person was named, and then a third, unless the second happened to be fully approved of by Gods and Men.—*ἐν γὰρ τοῖς προτέροις χρόνοις, ὅποτε βασιλεὺς ἀποθανοί, τῷ μὲν ἐξουσίαν εἶδεν ὁ δῆμος τῇ συνόδῳ τῆς βουλῆς, διὰν προσέδοιτο καταστήσασθαι πολιτείαν. ἡ δὲ βουλὴ μεσοβασίλεις ἀπεδείκνυν· ἐκεῖνοι δὲ τοῦ ἀρίστου ἀνδρᾶ, εἴτ' ἐκ τῶν ἐπιχωρίων, εἴτ' ἐκ τῶν πολιτῶν, εἴτ' ἐκ τῶν ξενῶν, βασιλεὺς καθίστασαν. εἰ μὲν οὖν ἡ τε βουλὴ τοῦ αἰρεθέντα ὑπ' αὐτῶν ἐδοκίμασε, καὶ ὁ δῆμος ἐπικύρωσε, παρελαμβάνεν οὗτος τὴν ἀρχὴν· ἐλλείποντος δὲ τίνος τρίτου, ἕτερον ὀνομάζε, καὶ τρίτον, εἰ μὴ συμβᾷ τῷ δευτέρῳ τὰ τε παρὰ ἀνθρώπων καὶ τὰ παρὰ τῶν θεῶν ἀντισηπεία*. D. H. p. 242.

† Dionysius constantly takes the Freedom to call Tarquinius Priscus the grandfather of the Second Tarquin, having, with great acuteness, proved, that, according to the artificial Chronology of the Regal State of Rome, he could not be his father.

‡ —*Συγισαμένους τινὰς ἐπ' αὐτοῖς αἰσθανομένους, καὶ τὴν ἀρχὴν ἑτέροις δοῦναι βυλομένους*. D. H. p. 214.

" great

" great Advantages which Tarquin's Victories over the Tuscans,  
 " Latines, and Sabines, had procured for the Roman People,  
 " who, he therefore hopes, will, from Gratitude, be themselves  
 " *Guardians to the Offspring of their Benefactor, and preserve to*  
 " *them the Kingdom which their Father had left them.*

" Then he proceeds to inform the People, that he has projected  
 " Regulations for the relief of insolvent Debtors, and to hinder  
 " any person from being carried to prison for debt, and that he  
 " purposes so to order matters, that the Citizens, rich and poor,  
 " shall not for the future pay equal Taxes, but every man in  
 " proportion to his substance; that the public Lands shall no  
 " longer be appropriated by the most audacious and shameless of  
 " men [meaning the principal Members of the Senate]; and in  
 " short, that he is determined to establish such an Equality among  
 " the Citizens, as shall put it out of the power of the Rich and  
 " Great to oppress their Inferiors. The Assembly, by their loud  
 " applauses, testify their approbation of this Discourse, and of  
 " him who had spoken it.

" The King, in pursuance of his promises, pays the Debts of  
 " the Insolvents, publishes an Edict commanding all those who,  
 " without just title, hold any of the public Lands, to deliver  
 " them up by a certain day; and having made a collection of the  
 " Laws of Romulus and Numa, which had been long neglected,  
 " commands that they be strictly observed; and he adds to them  
 " some new ones of his own.

" This method of governing did not please the PATRICIANS,  
 " who perceived that the Authority of the SENATE was daily  
 " diminishing: nevertheless, they dropt, for the present, their  
 " Design of attempting to dethrone SERVIUS, because they con-  
 " sidered that, should they nominate any other person to the  
 " Government, the People would reject him, and, should the  
 " SENATE refer the Election of a King to the PEOPLE, these would  
 " certainly give their Voices for SERVIUS, in which case he might  
 " have the advantage of being deemed a lawful King. \*.

\* Εισπικίλει γὰρ αὐτοῖς λογισμὸς, ὅτι τῆς μὲν βουλῆς ὅν αὐτὴ προηρρίτο παραγωγὴς ἐπὶ  
 τα πρᾶγματα, ὁ δὲ δῆμος ἐναντιώσεται τὸν ψῆφον ἀναλαβὼν· εἰ δὲ ἐπὶ τῷ δῆμῳ ποιεῖται  
 τὴν προαίρεσιν τῆ βασιλείας, ἀπάσαι τὸν Τυλλίον ψῆφιοφρησῶσι, καὶ περιεσται τῷ ἀνδρὶ τὸ  
 δοκεῖν κατὰ νόμους ἀρχεῖν. D. Hal. p. 216.

" SERVIUS,



"SERVIUS, aware of their policy, and of the advantage he has over them by the present disposition of the Multitude to favour him, calls a new Assembly of all the Citizens, tells them, he perceives that by the Measures he has taken to establish Liberty and Equality, he has incurred the Ill-will of the Patricians, who have now combined not only against his pupils, but against him, and that their Purpose is to recall from Banishment those Parricides, the sons of ANCUS, and place them on the Throne.—In conclusion, he resigns his regal Fasces to the Assembly to be disposed of as they shall think fit: but when he is meekly and modestly coming down from the Tribunal, that he may leave it to be filled by a new King, the Multitude, with tears in their eyes, conjure him to continue in the Government. Some of his Creatures, properly dispersed in the Crowd, call out to have the Curiae assembled for the Election of SERVIUS to be their King. SERVIUS does not neglect the Opportunity, but appoints a day for the business. Being then chosen unanimously, he accepts the Honour, without troubling himself about the suffrages of the SENATE, who refused the customary CONFIRMATION. Presently after this, he divided the public Lands [of which he had deprived the Patrician usurpers] among those of the Citizens, who, having no Estates of their own, were constrained to earn their Bread by serving others. Then he enacted Laws concerning contracts and other civil affairs, and got them\* confirmed by an Assembly of the Curiae.

"After these things, followed the most important Acts of Servius's Reign, namely, the Introduction of the *Census*, and the Institution of the *Comitia by Centuries*."

According to Dionysius's account of these matters "SERVIUS proportioned to the value of every man's estate, not only the tax he was to pay, but the *personal service* he was to perform. Each of the 193 Centuries (except the one Century of the sixth Class) was to furnish a certain contingent of men for the war; so that the richer Citizens, who, though few in number, composed

\* Επικυρώσει τὰς νόμους. It does not appear that these Laws needed the confirmation of the Curiae to make them valid; but, when approved by the People, they would probably be more cheerfully obeyed.

" the Majority of the Centuries, were continually in arms,  
 " and the Citizens of the other Centuries, being very numerous,  
 " and therefore serving only by rotation, were seldom in  
 " service."

The Historian adds, " that the King, finding the Rich dissatis-  
 " fied with this Regulation, to pacify their anger, threw, into  
 " their hands, all the powers and privileges, belonging to the  
 " Assemblies of the PEOPLE, by directing, that the Votes should  
 " thenceforward be taken by Centuries: so that if, on any  
 " question, the Rich, i. e. the 98 Centuries of the first Class,  
 " agreed in opinion, the business was over."

" Nevertheless the poorer sort, because each had a right (when  
 " called upon) to vote in his Century, as he had before voted  
 " in his Curia, *did not at first perceive*, that they had lost their  
 " weight in the general Assemblies. And when they did perceive  
 " it, they did not care, so long as they were exempt from paying  
 " taxes, and from going to the war."

" To augment the number of the Roman Citizens, SERVIUS  
 " granted the Rights of the City to the Freed-men; and in-  
 " rolled them in the Tribes; and, though the Patricians at first  
 " disliked this Measure, he, by a fine Speech, in which he put  
 " them in mind, that a City which aspired to *Empire* ought to  
 " be well peopled, reconciled them to it; and *they consented to*  
 " *receive this new Law.*"

" It was not only by these Regulations, *tending to lessen the*  
 " *Authority of the SENATE*, and the Power of the Patricians,  
 " that SERVIUS shewed himself *popular* in his Inclinations, but  
 " by giving up one half of his own Prerogative [to the SENATE].  
 " His Predecessors had engrossed to themselves the Cognizance of all  
 " Causes, both public and private, which they decided by the di-  
 " rection of their own \*Reason, and not by any Rule of Law. But  
 " he, reserving to himself the Cognizance of Crimes against the  
 " State, left the Decision of private Causes to other Judges [the  
 " Senators †] commanding them however to give sentence  
 " according to *Laws which he himself prescribed.*"

" After these domestic Regulations, he makes war for twenty  
 " years together, without interruption, against the Veientes, and

\* Προς του ιδιου τροπον.

† Vide infra, p. 164.

" other



" other Tyrrhenians [Tuscans]; for though his predecessor  
 " Tarquin, by a nine years successful war with these Enemies,  
 " had reduced them to own him for their SOVEREIGN, and, in  
 " token of their submission, to send him all the *Ensigns of Sove-*  
 " *reignty*, in use among them, yet they would not obey King  
 " SERVIUS, because he was not, by birth, a Gentleman. And  
 " they were encouraged to break the Treaty of Peace, by the  
 " misunderstanding at Rome between the King and the Patricians.

" When SERVIUS has reigned about 44 years, and is about  
 " 74 years old, the younger Tarquin, now 50 years of age, in  
 " concert with his wife Tullia, forms a Plot to seize upon the  
 " Kingdom, and draws into the Conspiracy those of the Patrici-  
 " ans, who were dissatisfied with SERVIUS's Government, as too  
 " much favouring the People\*.

" SERVIUS, being apprized of TARQUIN's Intrigues, reproves  
 " him: but, finding Reproof ineffectual, and that he demands  
 " to have his Pretensions heard by the SENATE, convenes the  
 " FATHERS; before whom He and TARQUIN make long Speeches,  
 " the latter insisting on his *hereditary Right* to the Crown, and  
 " on SERVIUS's Promise to put him in possession of it when he  
 " should be of an age to govern.

" SERVIUS, on the other hand, maintains that TARQUIN is  
 " a mere Pretender, and hath no Right or Title whatsoever to  
 " the Realm, and that the PEOPLE have the sole Right to dispose  
 " of it, as is manifest by their having given it to the elder  
 " Tarquin, a stranger, preferably to the sons of King Ancus  
 " Marcius. And he urges, as an incontestable Proof of his own  
 " Right to the Crown, that, during his whole Reign of 44 years, *no*  
 " *Citizen has ever accused him of Injustice, either in taking or holding*  
 " *it, nor has the SENATE or the PEOPLE ever attempted to depose him*†.

" He then makes a Panegyric upon his own manner of govern-  
 " ing. *Which of the Kings before me was so moderate in the*  
 " *exercise of Power, as I have been? Which of them treated the*  
 " *Citizens with the tenderness of a Father to his own Children, as I*

\* Τὸν πατριτικὸν τῆς ἀλλοτρίας ἐχόντας πρὸς τὸν βασιλεὺς καὶ τὰ δημοτικά πολιτεύ-  
 σα. D. H. p. 234.

† Ρωμαίων ὅδεις ἡγήσατο με πώποτε ἀδικεῖν ἢ ἐκβαλεῖν με τῆς ἀρχῆς ἐπεχειρήσῃ  
 ἢ ὁ δῆμος, ἢ ἡ βουλὴ. D. H. p. 238.

Vide supra,  
p. 54 in the  
Note.

Vide supra,  
p. 162.

Vide supra,  
p. 159, 160.

" have done? I have not even retained all the Power with which you  
" intrusted me. With relation to the most important Affairs, I have  
" made Laws, which you yourselves have approved. I have con-  
" formed myself to those Laws, as if I had been but a private  
" Citizen; and have given up a part of my Prerogative, by remit-  
" ting to you the Cognizance of private Crimes, a Privilege never  
" granted to you by any of my Predecessors. I see plainly that many  
" of this Assembly are dissatisfied with me on account of what I have  
" done for the benefit of the People; I shall not now attempt to  
" justify myself. If TARQUIN be thought more fit to govern, let him  
" take my place. I shall not envy the State a better King than I  
" am; but when I have restored the Crown to the PEOPLE who  
" gave it me, and am become a private man, my care shall be to  
" shew, that as I know how to govern, so I know how to obey.

" SERVIUS dismissed the SENATE, and, presently after, con-  
" vened the PEOPLE.

" Having first made an Encomium upon his Exploits before  
" he was King, and upon his Administration since, he informs  
" them, that TARQUIN accuses him of holding the Crown with-  
" out any right to it, pretending that his Father, when dying,  
" bequeathed it to him with the rest of his Estate, and that the  
" PEOPLE had no right to give to one man what belonged to  
" another.

" Hereupon, the Multitude, inflamed with anger and indigna-  
" tion, raise a mighty Clamour. Silence— (says Servius;) you  
" should not be so angry with TARQUIN, but send for him and hear  
" what he has to say, and even make him King, if you find that he  
" has been wronged in this Particular, and is more worthy to reign  
" than I am. As for me, I resign the Kingdom to you, the rightful  
" owners, from whom I received it.

" This said, he makes a Motion to come down from the  
" Tribunal. The Multitude break forth into a doleful howling,  
" weep floods of tears, and entreat him in the most earnest  
" manner not to yield his Crown to any other. Tarquin? (cry  
" out some among the Multitude) where is he? Knock him down.  
" Beat his brains out. The Pretender, terrified by these threats,  
" flinks away, with his associates, out of the crowd; and King  
" SERVIUS is conducted to his palace with the loudest acclama-  
" tions."

" After



" After this, TARQUIN, by feigned submissions to the King, lulls him into a fatal security : and then, seizing the opportunity, when the lower sort are gone into the country on account of the harvest, comes, Royally habited, and attended by a band of men secretly armed, to the Senate-house, and there seats himself in the Regal Throne," &c. &c. What follows, is to the same effect with Livy's account, till the King is murdered.

Dionysius adds, " Thus died TULLIUS, after a reign of 44 years. D. H. p. 242. The Romans say, that he was the first who violated the Laws and Customs of the Kingdom, by the means he used to get possession of it. In the Election of all his Predecessors to the Throne, the Voices of the SENATE had concurred with the Voices of the PEOPLE : But he had recourse to the favour of the Multitude only, of whom he had gained the poorest by his largesses, and other unprecedented \* methods. Nevertheless, he effaced all impressions, taken to his disadvantage, by exercising sovereign power with such gentleness and moderation, as induced many to think, he intended to change the Government into a DEMOCRACY. And it is said, that this was the principal reason that moved the Patricians to form Plots to dethrone him ; and that not seeing a probability of success by any other way, they engaged TARQUIN in their Conspiracy, and assisted him to ascend the Throne, with a view to recover, by his means, the power they had formerly possessed, and to lessen that of the PEOPLE, which had greatly increased during the Reign of TULLIUS."

WHAT, in this History of King SERVIUS TULLIUS, I would more especially recommend to the Reader's consideration, are the following particulars.

I. TULLIUS, without Authority from the PEOPLE, and con-

\* N. B. Our Author does not say a word, importing, that *Tarquin the Elder*, the son of the wealthy Greek merchant, *bought the Kingdom*, but only that he gained the Affections of King Ancus Marcius by *presents*, and of the Senators D. H. p. 186. by doing them good offices, and of the People by his affability and *liberality* [*χρημάτων μεταδοσίς*] and so they cast their eyes upon him as the fittest man to be successor to King Ancus.

trary

trary to the Will of the SENATE, takes *quiet* possession of the Kingdom.

2. He takes this quiet possession *avowedly* in quality of *Guardian* to his Predecessor's children: as if Rome was an hereditary Kingdom, or as if a Roman King in possession had a right to nominate his successor.

3. And, when he finds that the Senators are plotting to dethrone him, he makes no scruple to *declare to a general Assembly of the PEOPLE*, that he has possess himself of the Crown, *in order to preserve it for the Children of Tarquin, who had bequeathed it to them, and had appointed him to be their Guardian*; and hopes that the PEOPLE will be joint Guardians with him.

4. Nevertheless, very soon after, by a Complaint which he makes to the PEOPLE of a Design formed to dispossess him, he engages them to elect him to be KING *in his own Right*, to the prejudice of those *Pupils*, for whom he had before intreated them to preserve the Crown.

And, in another Assembly of the same PEOPLE, he declares that his pupil, *Lucius Tarquinius*, has no Right, by birth, to the Kingdom, nor any Right to it by his father's will, since the father himself had no title to it but by the PEOPLE's gift, who had elected him to the Throne preferably to the sons of his predecessor *Ancus Marcius*.

5. Though the *Senators* plotted to dethrone TULLIUS presently after his Accession, and though TULLIUS complained of this to an *Assembly of the PEOPLE*, yet, afterwards, this same TULLIUS urges to the SENATE, as a proof of his just title to the Throne, *That neither SENATE nor PEOPLE had in 44 years attempted to dethrone him*.

6. Though TULLIUS held the Regal Authority contrary to the will of the SENATE, and though, after the PEOPLE had, in Form, elected him to the Throne, the FATHERS *refused to confirm the Election*, yet he afterwards says to the SENATE, *I have not even retained all the Power with which YOU intrusted me*.

Vide supra,  
P. 54.

7. The Tyrrhenians [or Tuscans] who had been conquered by *Tarquinius Priscus*, and constrained to recognize him for their Sovereign, will not submit to his successor, *Servius Tullius*, because his mother had been a captive, and they do not know who his father was; as if they had submitted to Tarquin, not as  
the



the King of Rome, their Conqueror, but as the son of Demaratus, a Greek merchant\*.

But, with regard to the Tuscan wars, there is, in Dionysius's account of them, another thing still more worthy of observation, as it affords a notable specimen of the Diligence of this Author's enquiries†: For he has thereby discovered a war of nine years continuance, of which it is more than probable that LIVY knew nothing, as he is totally silent about it; and yet it was a war that ended more gloriously for the Romans and their King, than any they had before waged.

† Vide Middleton's Treatise, p. 22. and vide supra, p. 44.

And it likewise affords a specimen of that Exactness, for which our Author is so famed. TARQUIN, it seems, by his victories over the Tuscans, reduced them to solicit for peace upon any terms he should think fit to impose. He demands a Surrendry to him of all their Cities: to this they readily consent. But the Greek merchant's son is too much a gentleman, to reap any advantage, more than honour, from his conquest. "I am content (said TARQUIN to the Tuscan Ambassadors and Plenipotentiaries) with your Submission, and now you shall see how I will reward it. I shall not deprive any Tuscan of either his Life or his Fortune, nor condemn any one of you to banishment. I shall leave all your Cities in the enjoyment of their own Laws, and forms of Government; nor will I place garrisons in them; nor exact any tribute from you. But what I insist upon, and what I think, after all these favours, you cannot reasonably refuse, is, to recognize me for your Sovereign. Carry this news home to your Constituents, and bring me their answer. The Ambassadors return in a few days, bringing not only a verbal recognition of his Sovereignty, but all the Ensigns of it that were in use among them, a Golden Crown, an Ivory Throne, a Scepter with an Eagle at the top of it, a purple Tunick embroidered with gold, a purple Toga or Mantle, adorned with flowers of various colours, like the mantles worn by the Kings of Lydia and Persia, except that theirs were square, whereas the mantle presented to TARQUIN was semicircular.—TARQUIN however would not

\* N. B. Valerius Maximus puts Tarquin himself into his chapter *de humili loco natis*. Tarquinius Priscum ad Romanum Imperium occupandum Fortuna in urbem nostram advexit; alienum, quod ortum Corintho: fastidiendum, quod mercatore Demarato genitum: erubescendum quod etiam exule. Lib. 3. cap. 4.

" make

" make use of these Ornaments, till he had advised with the  
 " SENATE and PEOPLE, and obtained their Consent \*."

Our Author gives here, in what he says of *the Shape of the Mantle*, such a proof of his *scrupulous exactness*, that even *Montefino*, governor of the *transparent castle*, does not surpass him in this virtue. " Scarce had he told me (says *Don Quixot*) that  
 " he was *Montefino*, when I asked him, whether it were true,  
 " that was reported here in the world above, *That he had taken his*  
 " *great friend Durandarte's heart out of the midst of his body with*  
 " *a little dagger, and carried it to the Lady Balerma, as he willed,*  
 " *at the instant of his death?* He answered me, *that every par-*  
 " *ticular was true, except that of the Dagger; for it was no*  
 " *Dagger, but a little Stiletto, as sharp as an Awl.*"

8. Though, by the Institution of the Centuriate Comitia, the poorer sort, who had hitherto made the *majority of the Voters*, in the General Assemblies, were totally deprived of their Power in relation to the great Affairs of State, having now all together but *one Vote* of 193; yet they were so artfully cheated by the King, that they did not perceive the difference.

9. SERVIVS practised this Fraud, in order to transfer from his Friends, the poor *Plebeians*, who had elected him to the Throne, all the Power of the general Assemblies, to the *Patricians* †, who were his Enemies, and were plotting to dethrone him.

Treat. p. 29.

Hist. Rom.  
 Tom. I. p.  
 219.

\* Dr. Middleton, though not very fond of the *marvellous*, seems to have swallowed this story whole. Mr. Rollin does not so easily receive it into him. After transcribing Dionysius's account of the matter, he adds, " Tel fut le succès  
 " de la guerre contre les Etrusques, pendant neuf ans. Je ne sai pourtant si  
 " cette pleine soumission des Etrusques n'est point un peu exagérée par Denys  
 " d'Halicarnasse. Porsena, Tolumnius, le siege de Veies, dont il sera bientôt  
 " parlé, marquent que l'Etrurie n'étoit pas encore entièrement domtée."

It is not improbable, that the *Fineries*, spoken of, came originally from Etruria; Pliny and Strabo countenance this: and perhaps Tarquin was the first who brought the most of them into use at Rome: but that those Ornaments were presented to Tarquin by the twelve Nations, or Lucumonies, of that Country, by way of recognizing his sovereignty over them, as related by the Greek Historian, is too extravagant a tale to be admitted for History upon his sole testimony; especially as, by his own account, they maintained a Twenty-years-war against TARQUIN's immediate Successor. Vide supra, p. 162, 163.

† D. H. p. 726. *Eignat de &c.* Dictum autem est et ante in TRIBUTIS comitiis PATRICIOS à PLEBEIIS & pauperibus vinci; in CENTURIATIS vero PLEBEIOS à PATRICIIS superari, licet isti numero alii essent longe inferiores. Hudson. Vide supra, p. 51. note †.



10. But the most curious part of the Rhetorician's Story of King SERVIUS's Government, is what Dr. CHAPMAN thus expresses in brief. "SERVIUS TULLIUS—by a Law—proportioned to the  
"value of every man's Estate the Taxes he was to pay, and the  
"SERVICES he was bound to perform. From this time, therefore, they  
"whose extensive properties required a greater degree of Protection,  
"contributed both by money, and PERSONAL SERVICE, to the support  
"of the Public in a greater proportion," &c. Essay, p. 9.

It may be proper to give a close translation of the words of Dionysius himself, where he speaks of the manner of levying Money and Troops, after the Institution of the CENSUS, and the Division of the People into CLASSES and CENTURIES; because this part of his Story will be examined with some strictness; and because his degree of ignorance and folly, therein betrayed by himself, is perhaps, alone, sufficient to overthrow his Character of a diligent, faithful, and exact Historian. The Introduction to his account of the manner &c. is to the following effect.

SERVIUS TULLIUS, having got an exact Register of the number D. H. p. 221. of his Subjects, and of their respective Estates, introduced a most wise and beneficial Regulation. He divided the Roman People into SIX CLASSES.

1. The FIRST CLASS he composed of the Richest Citizens, each of whom was master of a fortune amounting to at least 100 Minæ\*; and he divided this Class into 80 Centuries or Companies. l. s. d.  
322 18 4  
Arbuthnot.

Of these 80 Centuries, 40, consisting of the Younger sort, were to serve in the field when occasion required; the other 40 consisting of the Elder sort [i. e. of men past 45 years of age] were to stay in the City to guard it.

2. The SECOND CLASS, made up of Citizens, the value of whose possessions reached not to 100 Minæ; and was not below 75 †, the King divided into 20 Centuries, ten of young men, and † 242 3 9 ten of old; these to garrison the City, those to march against the Enemy.

3. The THIRD CLASS, divided likewise into 20 Centuries, (ten of young men, ten of old &c.) contained all who possessed not the value of 75 Minæ, nor were worth less than 50 †. † 161 9 4

4. The FOURTH CLASS, divided, as the two former, into 20 Centuries (ten of old men, ten of young &c.) consisted of  
Z those

l. s. d. those who had not to the value of 50 Mina, but were worth,  
 80 14 7 at least, 25.

5. The FIFTH CLASS, divided into 30 Centuries (15 of old men, 15 of young &c.) comprehended all, whose possessions did not amount, in value, to 25 Mina, nor were below 12½.

The Citizens of this Class did not rank with the *Legionary Soldiers*, nor had any other arms, than slings and darts. [They served as skirmishers, *velites*.]

To attend these armed soldiers of the five Classes, the King formed four Centuries, or Companies, of unarmed men, namely, 100 of Smiths and Carpenters to make arms and engines of war; (these were joined to the 2d Class;) and 100 of Trumpets and Horns; (these the King joined to the 4th Class.) The Artificers, and the Music, being divided, like the rest, into old and young, the old staid with the old soldiers in the city, the young followed the young into the field.

Thus was formed the Roman INFANTRY, consisting of the *Legionaries*, and the *light armed Troops*.

Of CAVALRY the King composed 18 Centuries, out of the Citizens the most distinguished for their wealth, and noble birth. These Horsemen, called KNIGHTS, were added to the 80 Centuries of Legionaries [of the FIRST CLASS, which contained, in all, 98 Centuries.]

6. Into the SIXTH CLASS the King threw all the rest of the Citizens; and though they exceeded, in number, the Citizens of all the five superior Classes, he reckoned them only as ONE CENTURY; but, on account of their poverty, exempted them wholly from paying tribute, and from military service.

The whole number of Centuries was 193.

D. H. p. 223. " These things thus adjusted, he made the Levies of Soldiers  
 " according to the DIVISION OF THE CENTURIES; and, in raising  
 " Taxes for the public service, made each Century pay, accord-  
 " ing to its CENSUS. For, whenever he wanted Ten thousand,  
 " or Twenty thousand soldiers, he divided the multitude into 193  
 " Centuries, and ordered each Century to furnish its contingent  
 " of men. [το επιβαλλον εκαστω λοχῳ εκειναι παριχον εκαστον  
 " λοχον.] And having calculated the Expence of furnishing the  
 " Army with Provisions, and other military Stores, he, in the  
 " same



same manner, divided the People into the 193 Centuries, and ordered each Century to furnish its different Contingent according to its Cens<sup>us</sup>. [το ἐκ τῆς τιμῆς ἐπιβαλλόν ἐκαστὴ διαφορὸν ἀπαύτας ἐμελυσεν εἰς φρεν.] Whence it followed, that the Richest Citizens [the Citizens of the first Class] though fewer in Number [than the Citizens of the inferior Classes] yet being divided into MORE Centuries [than they] were continually in arms, and made larger contributions of money for the public service. And those Citizens who were in low or moderate Circumstances, making FEWER Centuries, by TWENTY \*, than the Rich, went seldom into the field, as serving only by Rotation; and they paid small Contributions of money. As for those who had not a sufficient stock whereon to subsist, they were exempted from all burdens.

\* The ingenious French Translator of *Dionysius* has, on this occasion, very obligingly exerted his skill to find a meaning for his Author. "J'ai été long tems sans pouvoir entendre cet endroit. Les 6 Classes faisoient en tout 193 Centuries, savoir 80 des plus riches citoyens qui composoient la premiere, à laquelle Tullius ajouta encore 18 Centuries de Cavaliers; 20 Centuries de la seconde Classe, et deux Centuries de Charpentiers, Forgerons, et Fourbisseurs qui y furent jointes; 20 de la troisieme Classe; 20 de la quatrieme, avec deux de Trompettes, Tambours, et Sonneurs de cor; 30 de la cinquieme, et une de la sixieme. Il y avoit donc en tout 98 Centuries de riches Citoyens, et 95 des mediocrement riches et des pauvres. Mais comment Denys d'Halicarnasse peut-il dire, que ceux qui n'étoient que tres-peu ou passablement riches faisoient 20 Centuries de moins que les premiers, c'est à dire, que les plus riches? Je croi que voici ce qu'il entend. Il y avoit 80 Centuries de riches, 20 dans la seconde Classe, 20 dans la troisieme, et 20 aussi dans la quatrieme de mediocrement ou passablement riches; 30 dans la cinquieme qui avoient à peine de quoi subsister, et enfin la sixieme ne faisoit qu'une Classe [Centurie] de Citoyens entierement pauvres. Ainsi la premiere Classe avoit 80 Centuries de riches; la 2, 3, et 4<sup>e</sup> trois fois 20, c'est à dire 60 Centuries de mediocre fortune, et par consequent ces Citoyens de mediocre fortune faisoient 20 Centuries de moins que les plus riches qui composoient la premiere Classe de 80 Centuries. Dans cette comparaison des plus riches avec les mediocres, Denys d'Halicarnasse ne parle donc que des 80 Centuries des Legionnaires de la premiere Classe, et des 60 de la 2, 3, et 4<sup>e</sup>, sans faire attention aux 18 Centuries de Cavaliers, qui étoient jointes à la premiere Classe, ni aux deux de Charpentiers, Forgerons, et Fourbisseurs, ni aux deux autres de Tambours, Trompettes et Sonneurs de cor qui avoient ordre de suivre les Centuries, de la 2<sup>e</sup> et de la 4<sup>e</sup> Classe." See *Les Antiq. Rom. de Den. d'Hal. traduites en François* &c. a note added, at the End of the First Vol. p. 572.

*Observations on Dr. MIDDLETON's Treatise,*

“ And these things the King did, *not without Reason* [*αὐτὸς αὐτίκα* :] But being persuaded that to all men *wealth* is the Prize of War, and that they expose themselves to hardships for the sake of preserving their Fortunes, he thought it right, that those who had most to lose, should suffer most Inconvenience in their persons and fortunes; that those who had less to lose, should be less disturbed in both: and that those who had nothing to fear, should suffer nothing, but be exempted from Taxes on account of their poverty. For, at that time, the Roman soldiers received no pay, but served at their own expence. And he was clearly of opinion, that *they who had nothing, but were even destitute of daily necessities, ought to \* pay nothing*; and that those who did not contribute any thing to the public Expence, ought not to be maintained in the Service, like Mercenaries, at the charge of other private Citizens †.”

How

\* One might naturally suspect, that the former Kings were of the same opinion. When Livy tells us (lib. 1. cap. 42.) that to the time of Servius Tullius, the Expences of the State, both in Peace and War, were supplied by a Poll-tax, every Citizen paying an equal tribute, [*Censum instituit, rem saluberrimam tanto futuro imperio: ex quo belli pacisque munia non VIRITIM, UT ANTE, sed pro habitu pecuniarum fierent*] he cannot possibly mean, that, in fact, poor men, who could hardly earn their daily bread by their labour, paid as large Contributions as the richest Citizens. It must have been a very small Subsidy, to the raising of which the wealthy contributed no more than the most indigent were able to contribute. With regard therefore to the *major part* of those, whom King SERVIVS threw into the *Sixth Class*, I apprehend that he did no more than exempt, by LAW, from paying taxes, such Citizens, as were before exempted from it by NECESSITY. It is probable, that, as the Romans were, at first, all poor Rogues, who lived by rapine, no Law to burthen one man more than another, was then made, nor perhaps till the Reign of SERVIVS TULLIVS. And it is likewise probable, that till he laid taxes more equitably, the moderately rich, and those who had a bare competency, or even somewhat less, paid as large Contributions as the richest Citizens, and this was the Injustice which he rectified.

† The Jesuits and M. Rollin have without hesitation received this piece of History as most authentic, and as containing a proof of the *great wisdom* of King SERVIVS TULLIVS.

“ Le SAGE Roy perçut de ces arrangements tout l'avantage qu'il en avoit espéré. La première Classe, comme la plus nombreuse, du moins à compter les Centuries, fut celle dont on tira, et un plus grand nombre de Soldats, et de plus amples contributions pecuniaires, pour les besoins publics. On n'ordonna plus les levées militaires par Tribus; et les impôts ne se payèrent plus par tête. TOUT SE LEVA PAR CENTURIES. Lorsqu'il falloit former une armée de 20000 hommes, ou contribuer une million, par exemple, aux frais d'une guerre, chaque centurie fournissoit tant d'hommes, et tant d'argent. La première Classe, donc, plus nombreuse



How obscure soever some expressions in this account may be, our Author's meaning, in what he says of the new method of levying Money and Troops, seems clear enough.

He

" nombreuse en Centuries, quoique moins abondante en hommes, que toutes les autres  
 " Classes prises ensemble, fournissoit elle seule plus de soldats, et plus d'argent que  
 " tout le reste. Ainsi les armées furent composées, pour la plus grande partie, des  
 " riches Citoyens de Rome. Comme ceux-cy avoient des terres et des biens à conserver,  
 " leur valeur étoit animée dans les combats, par des motifs d'intérêts; & parce  
 " qu'ils étoient riches, ils supportoient aisément les frais d'une Campagne, dont  
 " ils ne recevoient point d'autre récompense, que l'estime attachée à la vertu."  
 Hist. Rom. de Catr. et Rouil. Vol. I. p. 392.

M. Rollin (Vol. I. p. 252.) writes thus.

" Par ce nouveau règlement, plein d'une admirable sagesse, les choses se trou-  
 " voient tellement compensées par un mélange adroit de charges et d'avantages,  
 " que ni les pauvres ni les riches n'avoient aucun juste sujet de se plaindre. Et  
 " il faut bien que cela ait été ainsi, puisque le peuple depuis souffrit ce change-  
 " ment durant tant d'années, sans donner aucune marque d'improbation et de  
 " mecontentement.

" En effet, des deux côtés, s'il y avoit quelque nouvelle charge, il y avoit aussi  
 " de grands avantages. Quand il s'agissoit de lever des troupes, chacune des 193  
 " Centuries, excepté la dernière, étoit obligée de fournir certain nombre de Soldats, et  
 " certaine somme pour la Subsistance de l'armée. Or ceux qui étoient plus riches,  
 " étant en plus petit nombre, et faisant néanmoins plus de Centuries que les autres,  
 " qui étoient moins riches, et en plus grand nombre, se trouvoient obligés de servir  
 " presque sans relâche, et de fournir de sommes très fortes; tandis que les Classes  
 " d'un rang inférieur, beaucoup plus nombreuses que les premières, et divisées en  
 " moins de Centuries, ne marchoient que rarement, et à leur tour, et ne portoient  
 " que des taxes très légères. Par la même raison, ceux qui n'avoient précisément  
 " que de quoi pourvoir aux nécessités de la vie, et ils faisoient le grand nombre,  
 " comme par tout ailleurs, étoient exempts et de service et de tribut.

" On ne peut trop admirer ici les sages vues de Servius. Persuadé que les hommes,  
 " en faisant la guerre, n'ont point de motif plus pressant que leur fortune, et  
 " qu'il n'y a point de péril auquel ils ne s'exposent volontiers pour défendre leurs  
 " biens, il crut que ceux qui avoient plus d'intérêt que d'autres dans le gain  
 " d'une bataille, non seulement devoient par justice contribuer davantage de leurs  
 " biens, et de leurs personnes, mais aussi serviroient la République avec plus de  
 " Courage, et plus d'ardeur. Alors chacun faisoit la guerre à ses frais, et ce  
 " n'étoit point encore la coutume que les soldats Romains fussent entretenus aux  
 " dépens du Trésor public. Quelle différence, dans un combat, entre de telles troupes  
 " qui hazardent tout, et des aventuriers, qui n'ont rien à perdre! — SERVIVS, par  
 " le nouveau règlement, transporta adroitement dans LA PREMIERE CLASSE, com-  
 " posée des GRANDS DE ROME, toute l'autorité du Gouvernement; et sans priver  
 " ouvertement les PLEBEIENS du droit de suffrage, il fut, par cette disposition, le  
 " rendre inutile."

N. B. These last lines (in *italic*) do, to my apprehension, express Four very false notions. For it seems plain, even to demonstration,

*Observations on Dr. MIDDLETON's Treatise,*

He tells us, that the *richest* Citizens, though *fewer in number* than those of *moderate* and of *low* fortunes, yet being divided into MORE CENTURIES than they, contributed more money towards the public Expence, and were OFTNER in arms.

Now this *larger Contribution* by the RICH, and THEIR *more frequent service in war*, could not be A CONSEQUENCE of *their composing the majority of the Centuries*, unless we admit,

1. That Taxes were raised by the King (not upon the Individuals, according to the valuation of every man's estate, but) upon the CENTURIES\*, each Century, except the poor one of the sixth Class, furnishing a certain sum.

\* Vide supra, p. 172. note †.

2. That all the CENTURIES contributed EQUAL sums for the service of the Public.

3. That all the CENTURIES furnished EQUAL numbers of men for the Army.

These things supposed, it is intuitively certain, that the FIRST CLASS, composing the majority of the CENTURIES, furnished more money for the public Expence, and more soldiers for the Army, than all the other CLASSES.

And from the same premises it is demonstrable, that the Citizens of the FIRST CLASS, comparatively, few in number, must, in time of war, be almost continually in arms, as Dionysius says they were; and likewise, that the Citizens of the inferior Classes (at least those of the 4th and 5th) serving only by rotation, could but seldom be called to the service; which, as the same writer reports, was their case.

For example: During the 20 years war, which (according to the Greek Historian) King Servius Tullius carried on against the Tyrrhenians, if we suppose that all the Richest were every year in arms, we must say that no Citizen of the 4th Class could be obliged to arm oftner than once in four years.

That SERVIVS did neither openly nor secretly deprive the PLEBEIANS of their Right of suffrage;

Nor transfer to the Nobles all the authority of the Government;

Nor was the FIRST CLASS composed of the Grandees, *composés des Grands*, but the majority of the Citizens of the FIRST CLASS were PLEBEIANS.

Nor is it true, that, when the poor Citizens of Rome served without pay, they were *avanturiers qui n'avoient rien à perdre*, which is supposed in the *Quelle difference &c*! or the Exclamation and Comparifon are misplaced.

For,



For, that a Century of the Fourth Class contained, at least, four times the number of Citizens contained in a Century of the First Class, we may gather, not only from the usual proportion, which, in point of number, those of moderate possessions bear to the rich men of a nation, but likewise from this Consideration, that King Servius's chief aim, in his Institutions, was to lay all burdens equitably, that is, to proportion them to the strength of the Bearers. Now, therefore, whatever was the number of Citizens in a Century of the First Class, the number of Citizens in a Century of the Fourth Class must be supposed four times as many; otherwise, the estate of a Citizen of *this* Class being but a fourth of the Estate that ranked a man in the *first* Class, and equal sums being levied upon *all* the Centuries, nothing like a due proportion was observed by the King in laying the Imposts.

BUT, that this account of King Servius's method of raising *Subsidies* and *Soldiers* is meer Romance, and the idle invention of *Dionysius, the son of Alexander*, may well be concluded from the following Considerations.

1. The levying Taxes upon the CENTURIES, in the manner described, could not answer the King's purpose of proportioning burdens to strength. For by that method of proceeding it must fall out, that Citizens of the SECOND CLASS, whose Estates did not exceed 75 minæ, would pay within a fourth as large Contributions as were paid by Citizens, whose Estates amounted to 200, 300, or perhaps 1000 minæ. For how rich soever a Citizen of the first Class happened to be, the Estate which qualified him to be of that Class was but 100 minæ; and his tribute is supposed not to be larger than the tribute paid by a Citizen of the second Class, but in the proportion of 100 to 75.

2. The notion of proportioning PERSONAL SERVICE to every man's Estate, is a meer dream, and a very absurd one, the thing being absolutely impracticable.

Let us suppose, that our British armies received no Pay from the Public, and that they were formed upon a plan like that imputed, by *Dionysius*, to King Servius Tullius. According to this plan, the Companies of Grenadiers, who are the Soldiers commonly employed in the most difficult, dangerous, and desperate service, would be composed of our most wealthy Peers and

Vide supra,  
p. 169.

Commoners; and all the Gentry, of inferior Fortunes, so ranged into different Corps, that their fatigues and dangers would, *intentionally* at least, be proportioned to their Degrees of wealth; *they whose extensive Properties required a greater degree of Protection being obliged to contribute by PERSONAL SERVICE to the support of the Public in a greater proportion.*

Well then, a Breach is made in the Wall of a Town besieged, and this breach is to be stormed. All the noble and wealthy Grenadiers, who compose the battalions, appointed to this Service, cannot well be supposed to have *equal* Estates. A Grenadier, of 40000 l. a year, must unavoidably condescend to rank with another of but 20000, or perhaps but 10000. How then shall *personal Service* and *Dangers* be proportioned to the degrees of wealth? The foremost Rank of the foremost Battalion must unquestionably consist of the *most opulent*; but, unless these *most opulent* are *equally opulent*, personal services and dangers will not be proportioned to Estates; those will be equal, where these are very unequal.

3. The MOTIVE, from which SERVIUS TULLIUS is said, by the Greek writer, to have introduced this method of raising Troops, and to have contrived, *that fatigues and dangers should be proportioned to Estates* [that, for instance, a Citizen of 400 l. a year should make four times as many Campaigns as a Citizen of only *one hundred*, or be exposed to dangers four times greater than those to which the other ought to be exposed] is a foolish one, and is unworthy of so sensible a man as this King of Rome appears to have been.

Vide supra,  
p. 172.

*It was not without REASON* (says our prating Rhetorician) *that the KING did these things. But, being persuaded that WEALTH [i. e. the Preservation of Wealth] is the prize which all men, who fight, propose to themselves, and that it is to defend their Estates, they expose themselves to hardships, he thought it right, that those men who had most to lose, should suffer most inconvenience in their persons and fortunes; and that they, who had less to lose, should be less disturbed in both: and that those who had nothing to fear [i. e. nothing to lose] should suffer no inconvenience.*

Now, first of all, it is known by constant Experience, that men will undergo as great hardships, and be as stout in fighting, to get an Estate, as to *preserve* one.

And,



And, in the next place, the *Views of Conquest and Acquisitions*, (not of *preserving Estates acquired*) were what, at this time, chiefly engaged the Romans in Wars, and inspired them with Courage in Battle, according to the account given of them by our Rhetorician himself; who represents the KING speaking of the Romans, as a People, who aspired to Empire, and had formed vast designs. Certainly, a defensive war was not likely to raise them to any considerable pitch of Greatness. D. H. p. 226.

And, in the third place, it is a false notion, that, in a well ordered Community, a man of free Condition, and who is moderately Rich, or possessed only of a Competency, has less of real Happiness to lose, than the richest man of the nation, or, consequently, less powerful motives of Interest to fight with Resolution, in defence of his Country. Nay, a free Subject in any State, and especially a Free Citizen of Rome, who (according to our Author) had a share in making Laws, War and Peace, and a vote in the Election of Magistrates, could never (though without any Estate) want a sufficient motive to fight manfully against Enemies, who, should he fall into their power, would infallibly sell him for a slave: for such, in those days, was universally the fate of Captives.

4. But what compleats the Folly of the account, given by our Rhetorician, of the King's new method of raising 20000 Legionary Soldiers (whenever he needed such an army) is the visible impossibility of his doing it by that method.

The whole number of Roman Citizens, upon the King's Muster, D. H. p. 225. appeared to be 84700 \*.

One moiety, or rather the major part of these neither paid taxes, D. H. p. 224. nor did any military service.

There remain therefore but about 40000 men out of whom to form the Army required.

Of these 40000, we must suppose one half, or very near it, to be in the FIFTH CLASS, which consisted of those Citizens, who, not being allowed any arms but slings and darts, did not rank with the Legionaries, and whose Census was but 12½ Minæ, the eighth part only of the Estate which qualified a man to be of the FIRST CLASS.

\* In this number were comprehended only such as were able to bear arms: not women, nor children, nor young persons under 17 years of age, nor slaves.

A a

So

So that the Legions must be formed out of the remaining 20000 Citizens, i. e. out of the Citizens of the *First, Second, Third and Fourth* Classes.

Now the Rhetorician (who forms the *Legions* out of these Classes only) tells us, that the *Citizens of the three latter were seldom called to arms, serving only in their turn, whereas those of the FIRST were in service without intermission.*

I have already observed, that if we suppose the Estate of a Citizen of the *FOURTH CLASS* to be in value, but a *fourth* of the Estate of a Citizen of the *FIRST*, and if we suppose *all* the *CENTURIES* to pay equal sums, the Tax would not be equally laid, unless every Century of the *FOURTH CLASS* contained four times the number of Citizens contained in a Century of the *FIRST*. And if this was really the case, the number of Citizens, contained in the 20 Centuries of the *FOURTH CLASS*, and the number, contained in the 80 Centuries of *Infantry* of the *FIRST*, were exactly equal.

Let us say then, that those 80 Centuries, *one with another*, contained (in King Servius's time) each about 88 \* men, and all together about 7040; and that these, in time of war, were continually in arms.

This supposed, and that the 20 Centuries of the *FOURTH CLASS* contained the same number, this Class furnished no more for the Army than 1760, the *fourth* of 7040.

And so likewise the 20 Centuries of the *THIRD CLASS*, supposing them to contain, according to the Rule of proportion above-mentioned, 3520 men, (which is one half of 7040) furnished 1760 men for the war.

And the 20 Centuries of the *SECOND CLASS*, containing, by the same Rule, 2340, furnished, (as the Centuries of each of the two preceding Classes) exactly 1760 soldiers.

\* Let  $x$  be the number of men contained in a *Century* of the *FIRST CLASS*. Then will the number of *Legionary Foot* contained in that Class be  $80x$ . The number of men in the *SECOND CLASS* will be  $20x + \frac{20x}{3}$ . The *THIRD CLASS* will be  $40x$ . The *FOURTH*  $80x$ . But all these together are supposed equal to 20000. Therefore  $80x + 20x + \frac{20x}{3} + 40x + 80x = 20000$ . Or,  $240x + 60x + 20x + 120x + 240x = 60000$ . Therefore  $680x = 60000$ . And  $x = 88 + \frac{160}{680}$  or  $\frac{4}{17}$ .

Now



Now these several Contingents of the 2d, 3d, and 4th Classes, being added to the 7040 men of the FIRST, the whole amounts to 12320, the produce of 140 Centuries, viz. the 80 of the *First Class*, and the 60 of the 2d, 3d, and 4th.

|   |       |
|---|-------|
| { | 7040  |
|   | 1760  |
|   | 1760  |
|   | 1760  |
|   | —     |
|   | 12320 |

But of these 12320, we are not to send into the field any who are past 45 years of age; for these elders are to garrison the City; and they are said to have composed 70 of the 140 Centuries. I pretend not to guess what number these amounted to, (the Centuries not being supposed to contain equal numbers) but certainly they amounted to such a number, as when deducted from the 12320, would not leave the King an Army of near 10000 Legionaries to lead against an Enemy. And yet all the Citizens of the FIRST CLASS are supposed to be enlisted, and the other Classes are supposed to have furnished their full Contingents. Where then could the King get the 20000 soldiers, whom he was to raise whenever he wanted them?

If, to increase his army for the Campaign, he called upon the 30 \* Centuries of the FIFTH CLASS, to furnish their Contingents of *Slingers* and *Dartmen*, these contingents, being proportioned to the *Census* of the Class, would not amount to more than 2640; and of these all the old men, all who are past 45, are to stay at home, to guard the City.

So that, by no reckoning, could the King raise 20000 soldiers, nor, for the field, even 10000, in following the method which the Ingenious Halicarnassian has with so much *fidelity* and *exactness* described.

THE sum of all seems to be this: Our Rhetorician imputes a foolish LAW, of his own invention, to King SERVIUS, and invents, for the King, a foolish motive for making that foolish Law, and then admires the Excellency of the Law, and the Wisdom of the Legislator †.

LIVY

\* The 30 Centuries, reckoned one with another at 88 men per Century, will have contained 21120. The eighth of these is 2640, from which are to be deducted the *Seniores*.

† I admire (said a foreign Gentleman, as well acquainted with our present Laws, as Dionysius was with those of ancient Rome) the *Wisdom* of the English Laws in relation to the Crimes of Horse-stealing and Cow-stealing. The Penalty for the former is *Death*, the Penalty for the latter is only *Transportation*. The Lawgivers did not make this Distinction without good reason [*un atep autias:*]

*Observations on Dr. MIDDLETON's Treatise,*

LIVY has none of these idle Dreams; he says nothing of the King's raising equal sums upon 192 Centuries, nor of his proportioning men's PERSONAL SERVICE to their *degrees of wealth*. Nor is there the least appearance of a Reason to believe, that the Division of the People into *Classes* and *Centuries*, was made with any view to a more commodious method of levying *Subsidies* or *Soldiers*. The CENSUS (or Survey of the Citizens, and Valuation of their Estates) in consequence of which the King taxed every man in proportion to his Substance, was prior to the Division of the People into *Classes* and *Centuries* \*. This *Division* seems to have been made, for no other end but (as far as the thing was practicable) to proportion POWER, in the GENERAL ASSEMBLIES, to the *degrees of wealth*, and to the different burthens, accordingly laid on the Individuals, when Taxes were imposed; a measure which SERVIUS thought necessary to the Introduction of that EQUAL COMMONWEALTH, which he is generally believed to have projected.

AND this leads me to the last Observation I shall make on DIONYSIUS's History of King Servius Tullius.

D. H. p. 243.

11. He concludes the History with telling us, that "the KING, at the time of his being assassinated, was believed, by many of the Romans, to have formed the Design of changing the Government into a DEMOCRACY; that this Persuasion was the principal Reason that moved the PATRICIANS to plot his dethronement; and that, when they engaged TARQUIN in their Conspiracy, it was in the hope of recovering, by his means, the Power they had formerly possessed, and of lessening the Power of the PEOPLE, which had greatly increased during the Reign of TULLIUS."

Certainly there cannot be a more staring Inconsistency, than there is between these last words, and the whole preceding account

For, if my Cow be stolen, I can get upon my Horse, ride after the Thief and overtake him; but, if my Horse be stolen, though I get upon my Cow, I cannot easily pursue the Thief with effectual expedition.

\* It is generally admitted, that the Centuries were not equal in numbers of men; and if we only suppose that the number of men in a Century was greater or less according to the *Wealth* of those Citizens who composed it, we may easily conceive how POWER, in the General Assemblies, might, with some degree of exactness, be proportioned to *Wealth*.

of



of the Changes, made by the KING in relation to the Government.

By that Account, the KING had transferred, from the *Multitude* to the *few Rich*, all the Power of the *General Assemblies*; and the Historian asserts (as we have more than once observed) that the PATRICIANS, though inferior in number, were superior in strength to the *Plebeians* in the *Comitia Centuriata*, Assemblies of a new fashion introduced by KING SERVIUS for determining all the great Affairs of state, making *War* and *Peace*, enacting *Laws*, and electing *Magistrates*.

If we may suppose, that, in the passage above cited, the Historian, by the word PATRICIANS, means the SENATORS, as he often does, still the Inconsistency remains: For the KING had increased the legal Powers and Privileges of the SENATORS, not only by transferring \* from himself to them the Cognizance of private Causes, but, in one respect, by the Institution of the *Centuriate Assemblies*, the Votes of the SENATORS, in those Assemblies, being of more value than they had been in the Assemblies of the *Curia*. Vide supra, P. 103.

I suspect therefore, that, if the Historian means any thing, when he speaks of the PATRICIANS *losing*, and the PLEBEIANS *acquiring* Power, under KING SERVIUS, he means, not that those alterations were made by any LAW, but that, in *fact* and *practice*, the KING neglected the SENATE more than the former Kings had done, and, in some instances, (as particularly in his own Election to the Throne) contented himself with the *Sole* approbation of the PEOPLE *assembled*. And it was perhaps his visible disregard for the SENATE, and his Courtship of the COMMONS, which occasioned the suspicion of his intending to make the Government, *by Law*, wholly *Democratical*, to the exclusion of the SENATE's Authority.

" LIVY and DIONYSIUS (says an ingenious writer) agree in ascribing to King SERVIUS TULLIUS the Design of abdicating the Crown, and of changing the *Monarchy* into a *Republic*, but differ concerning the *Kind* of Republic which he purposed.

\* This is a part of Dionysius's Tale, but is in no degree probable, since we find that the Consuls, who succeeded to the Kings, had that Judiciary power vested in them.

"to establish. DIONYSIUS reports, that it was a Democracy,  
 "LIVY an Aristocracy, with a small mixture of seeming, unreal  
 "Democratical Government. And that the Aristocracy, established  
 "at the Refuge, was upon SERVIUS's Plan."  
 And the same Writer thinks, that "SERVIUS's Institution of the  
 "Comitia Centuriata is an incontestable proof of his Aristocra-  
 "tical \* Inclinations;" and he supposes, that "the PATRICIANS  
 "were masters in those Assemblies, and that the King made this  
 "change in the Constitution, to reward the zeal which the  
 "Patricians had shewed for his interest:." (for the Author  
 adopts what LIVY says concerning SERVIUS's possessing himself of  
 the Kingdom, that it was with the Connivance of the SENATE,  
 voluntate Patrum.)

Now, in the notions, here delivered, there are four particulars  
 which I know not how to admit. For,

1. I cannot observe in LIVY, any Intimation, that King Servius  
 intended to establish an Aristocracy. And it is not likely, that  
 he should have that Intention, at a time, when the Senators were  
 his mortal Enemies.

2. It does not appear that an ARISTOCRACY was established at

\* Vid. Dissertation sur l'Incertitude des cinq premiers Siecles de l'Histoire  
 Romaine. Partie seconde chap. iv. "Selon ce dernier [Denis d'Halicarnasse]  
 "les PATRICIENS favoriserent la Conjuraton de Tarquin le Superbe contre son  
 "Beau-pere, parce qu'ils estoient mecontents du dessein qu'il avoit formé d'abolir  
 "la monarchie, et d'établir un Gouvernement Democratique. Mais y a-t-il  
 "la moindre vraisemblance, et cela ne se détruit-il pas soi-même, quand on  
 "réflechit sur la forme de Gouvernement que Servius venoit d'établir peu  
 "auparavant ?

"On voit bien, qu'il jugeoit le Gouvernement Aristocratique préférable au  
 "Democratique, puisqu'il venoit d'établir un Gouvernement, auquel le Peuple  
 "n'avoit part qu'en apparence, et pour la forme, et où les PATRICIENS étoient  
 "MAITRES des Résolutions qui se prenoient dans les Assemblées Generales."

A little before (speaking of Servius's Introduction of Comitia Centuriata) he  
 writes thus :

"Les Patriciens-comprirent tout ce qu'ils y gagnoient. Leur Ambition se  
 "trouva satisfaite, et s'ils devoient porter presque toutes les charges de l'Etat,  
 "ils s'en voyoient amplement dédommagés, par l'influence qu'ils alloient avoir  
 "sur le Gouvernement, auquel le Peuple n'avoit plus part que pour la forme,  
 "et dont ils restoit seuls les maitres. Par ce moyen Servius Tullius vint à  
 "bout en même tems de deux choses; la premiere de récompenser, et de s'attacher  
 "encore plus fortement les PATRICIENS, qui avoient favorisé ses brigues pour la  
 "Couronne" &c. &c.

the



the *Refuge*, in any other sense than a TYRANNY was *established* at the death of SERVIUS TULLIUS; which I presume is not the sense, in which the Author uses the word *establish*.

3. The PATRICIANS were far from being masters in the *Assemblies by Centuries*. And therefore,

4. The Institution of those *Assemblies* had no tendency to introduce an *Aristocracy*, though it made the Votes of the Senators and of the other rich Citizens, in the *General Assemblies* of the PEOPLE, to be of more value than they had been before.

But of these particulars something further will be said hereafter.

"It is true, (says Mr. Moyle) He [Servius Tullius] strengthened the PATRICIAN interest, by introducing an inequality of suffrages in their favour: But he quickly repented his Conduct, and applied himself so entirely to the good of the People, that the Nobility were alarmed at it, and, in conjunction with the new Pretender TARQUIN, formed a Design to dethrone him; and when (by his great Authority with the Commons) they miscarried in an open attempt of deposing him, they cut him off by a barbarous Assassination, in the midst of that glorious design he had formed of introducing an EQUAL COMMONWEALTH."

This lively and acute young \* Gentleman did not here seem to be aware how improbable it is, that SERVIUS should exert his Political skill to strengthen the Interest of the PATRICIANS, if, against their will, he was advanced to the Throne, by the favour of the Commons, which is Dionysius's story, and admitted for true † by our Author.

Again, Mr. Moyle (in p. 76) writes thus. "I have often wondered, that the ROMANS, instead of settling a DEMOCRACY, after the Expulsion of their Kings, should make choice of an ARISTOCRACY, considering that the Revolution was brought about by the People, and not by the Nobility, who had been utterly ruined by the Tyranny of TARQUIN, and were in no Condition to make head against his arbitrary conduct; much

\* The Editor of his Works tells us, that Mr. Moyle was but 24 when he wrote the first part of his *Essay upon the Roman Government*.

† "SERVIUS being advanced to the Throne, by the favour of the COMMONS, against the will of the NOBILITY &c." Moyle's Works, Vol. I. p. 67.

“ less, by their numbers, and their authority, to influence such a  
 “ mighty turn of Affairs. Their share in the Revolution was  
 “ no more than breaking the Ice, and inflaming the People to  
 “ take up arms; but without their Concurrence, they had infallibly  
 “ perished in the attempt. All that can be said, *in vindication of*  
 “ *the People*, is, that they were unused to command, and from  
 “ the habit of obeying, *willingly submitted to any CONSTITUTION,*  
 “ *which the Nobility imposed on them;* or else for want of a De-  
 “ magogue to form a popular model, or, from ignorance of  
 “ union, were not sensible of their true force and strength; or  
 “ else their terror and apprehensions, from abroad, of TARQUIN  
 “ and his *Return* made them *assent* \* *to the DOMINION of the*  
 “ *SENATE*, rather than hazard all by an untimely Division.”

We see, it is here taken for granted, that *the Romans, after the*  
*expulsion of their Kings, MADE CHOICE of an ARISTOCRACY,*  
 that *this* became the CONSTITUTION of the State, and that the  
 People *assented* to the DOMINION of the SENATE.

Now it is plain, that ARISTOCRACY, or the DOMINION of the  
 SENATE, was no more the CONSTITUTION of the Roman State  
 in the first years after the *Regifuge*, than *unlimited Monarchy* would  
 be the *Constitution of Great-Britain*, in case the two Houses of  
 Parliament, from a high opinion of the King's wisdom and virtue,  
 and an apprehension of the great Evils, which, in the crisis of a  
 dangerous war, might arise to the Public, from difference of  
 opinion among the Members of those Assemblies, should, *for*  
*some time*, forbear all Enquiry into the justice and expediency of  
 the measures taken by the Administration.

An Aristocracy, within a few years after the expulsion of the  
 Kings, did, in fact and reality, take place, but this, not by the  
 explicit and deliberate choice of the People; nor was the FORM

\* Vide supra, p. 120. Polybius speaks to the same effect; but if he means  
 any thing more than a *tacit assent* to the Dominion of the *Senate*, while the power  
 continued to be *legally* in the PEOPLE, he certainly mistakes. The unexcep-  
 tionable Conduct of the *Senate*, in the beginning of the Commonwealth, gained  
 them the entire Confidence of the People.—*Multa blandimenta Plebi per id*  
*tempus ab senatu data.—Pauperes satis stipendii pendere, si liberos educarent:—*  
 [this was one of King Servius's Regulations now restored.] *Nec quisquam*  
*unus malis artibus postea tam popularis esset, quam tum bene imperando universus*  
*senatus fuit.* Liv. lib. 2. cap. 9.



of the Government *Aristocratical*. The *Form* was manifestly *democratical*, as the supreme power was by *Law* vested in the general Assemblies of the People; in which Assemblies the Nobles had not the majority of Voices.

Before I quit this subject, I cannot help observing, that it seems impossible, for any writer, how ingenious and judicious soever, not to fall into inconveniences, if, in treating of *Roman* affairs, he be prepossessed with a high opinion of *Dionysius of Halicarnassus*, and take him for a Guide.

Who would have expected to meet with any thing like the following passages in the much admired work intituled *DE L'ESPRIT DES LOIX*?

Vol. I. p. 168. " La Constitution  
" changea sous *SERVIUS TULLIUS*.  
" Le *SENAT* n'eut point de part à son  
" election, il se fit proclamer par le  
" *Peuple*.—Il porta directement au  
" *Peuple* toutes les affaires—à mesure  
" qu'il affoiblissoit la puissance Royale,  
" et l'autorité du *SENAT*, il augmen-  
" toit le pouvoir du *Peuple*."

P. 169. " Quand *SERVIUS* eut avili  
" les *PATRICIENS* &c."

P. 171. " Le peuple Romain étoit  
" divisé de trois manières, par *CEN-*  
" *TURIES*, par *Curies*, par *Tribus*.  
" Dans la *PREMIERE* [instituted by  
" *SERVIUS TULLIUS*] les *PATRICI-*  
" *ENS*, les *PRINCIPAUX*, les *GENS*  
" *RICHES*, le *SENAT*, ce qui étoit à  
" peu-près la même chose, AVOIENT  
" PRESQUE TOUTE L'AUTORITE.—  
" Les *PATRICIENS* étoient dans cette  
" division, les maîtres des suffrages."

This confounding of the *SENATE* with the *Principal Citizens* [the *Primores Civitatis*] the *Patricians*, and the *Rich*, as if they were à peu près la même chose, is what greatly contributes to make the History of *Servius Tullius*, as given by *Dionysius*, absolutely without a meaning. And it is amazing, that so many learned men should suffer themselves to be misled and bewildred by such an ignorant, prating, Greek sophist. *Livy* makes not this Confusion. *Hæc omnia in Dites\* à Pauperibus inclinata onera. Deinde est bonos*

\* By the *RICH*, (*Dites*) it is plain, that *Livy* does not here mean the Citizens of the *FIRST CLASS* only, but the Citizens of all the *Five Classes*, from whom Tribute was required, and whom he distinguishes from the *Pauperes*, the Citizens of the *Sixth Class*, who paid no Contribution: But by *Primores Civitatis*, he undoubtedly means only the *Senators*, the *Knights*, and the other Citizens of the *FIRST CLASS*, i. e. the *RICHEST* Citizens who composed the Majority of the whole number of Centuries, and who, he tells us, seldom differed in opinion. [*Ibi si variaret, quod raro incidebat &c.*]

B b

So

*bonos additus. Non enim (ut ab Romulo traditum ceteri servaverant Reges) VIRITIM suffragium eadem vi eodemque jure promiscue omnibus datum est: sed GRADUS FACTI, ut neque exclusus quisquam suffragio videretur, et vis omnes penes primores Civitatis [i. e. ditissimos] esset.* He does not say *penes Patres*, or *penes Patricios*. It will be granted, that the SENATORS were among the PRIMORES CIVITATIS, i. e. the *Richest*; but let the number of SENATORS be, at this time, 200, or 300, we cannot well suppose they were so split into Companies or *Centuries*, as to make many votes in the *Comitia Centuriata*.

Vide supra,  
P. 47.

Vide supra,  
p. 28. 44. 49,  
50.

As to the PATRICIANS, *Livy* (as I have before observed) never speaks of them in his History of the *Regal State of Rome*; and, be their Dignity whatever any one shall please to suppose it, their weight, in this new sort of General Assemblies, was no more than just what their degree of wealth gave them: and I have offered some Reasons, in the foregoing Observations, to believe, that the PATRICIANS, as distinguished from the SENATORS, were, by the smallness of their number (in the times of the Kings) so very inconsiderable, as to be next to nothing.

TO the History of the Acts of KING SERVIUS TULLIUS there is no *chronology*, whereby to settle, with precision, the respective years, in which the several Acts were done; and therefore I presume, we are at liberty to place those Acts in such order of succession, as will make the whole a consistent story. (I except those things, which are *expressly said* to have been done *after* others that are mentioned, as the LUSTRATION *after the CENSUS*; and I except likewise those things which are expressly said to have been done, some in the *beginning*, some in the *end* of his Reign.)

Now I imagine, that by using this liberty we may clear up the obscure parts of the History in question.

D. H. p. 223. So likewise *Dionysius*, who speaking of the People's being divided into *Classes* and *Centuries*, according to their wealth, says, *Τουτὸν δὲ τὸν τρόπον ἅπαν ἐπίθεις τὸ βαρὺ τοῖς πλεῖστοις τῶν τε κινδύων καὶ τῶν ἀναλωμάτων &c.* does not by τοῖς πλεῖστοις mean the *Richest* Citizens, those of the *First Class* only, but the Citizens of the Five Classes who were subject to Taxes. When, in the same discourse, p. 224. he speaks of the *Richest*, he calls them *πρῶτες λοχεὺς τοὺς ἀπὸ τοῦ μεγίστου τιμημαλός.*



LIVY tells us, that SERVIUS became KING, *with the consent or connivance of the FATHERS*: so much therefore we may venture to receive as true History; and the rather, as there is no other reasonable way of accounting for his so quietly possessing himself of the Throne, without an *Election* by the PEOPLE.

Let us now, for the reasons above given, suppose, that this *Consent or Connivance* was in consequence of a Covenant between him and them, whereby he had engaged himself to resign the Crown to young TARQUIN, so soon as this Prince should be of an age to govern: That the rupture between the KING and the SENATE was on account of his refusing to perform, at the appointed time, his part of the Covenant: That SERVIUS, to engage the COMMONS to support him, distributed among them the *Lands* conquered in his *Etrurian* [or *Tyrrhenian*] war, and which had been since usurped by the principal Senators (perhaps with the connivance of the KING, who, at that time, was by them supported :) That, after this distribution of the Lands, he instituted the CENSUS and the COMITIA CENTURIATA, not to favour the SENATE, and the PATRICIANS, not to introduce an ARISTOCRACY, but *with the purpose of establishing a DEMOCRATICAL GOVERNMENT*, the introduction of which he (according to *Dionysius*) was believed by the Romans to be actually contriving, at the time when he was cut off by Assassination. Vide supra. P. 149.

This may at first, perhaps, have the appearance of a Paradox, it being generally thought (and particularly by the Three Writers just mentioned) that the Institution of the *Centuriate Assemblies* was favourable to the SENATORS and the other *Nobles*, and tended to bring the State under an *Aristocratical* Administration. But surely this notion is not well founded, if Livy knew any thing of the History and Constitution of his Country in those times. For, by his Account, the Election of SERVIUS to the Throne was long after the transfer of the privileges, possessed by the *Curiae*, to the *Comitia Centuriata*; and, he being *elected with most remarkable unanimity*, it is plain, that he had not transferred the whole Power of the Government into the hands of the *Nobles* and *Patricians* (as Mr. ROLLIN \* supposes) nor had he introduced an

\* Servius Tullius—résolue de faire passer toute l'autorité dans le Corps de la Noblesse et des Patriciens. Hist. Rom. Tom. I. p. 245.

inequality of suffrages in their favour, as Mr. MOYLE imagines; or else we must say, that the Nobles and Patricians were his friends, and were not disobliged by his distribution of the public Lands among the COMMONS: but this, I think, will not by these writers be admitted. The *primores Civitatis*, the Rich, and the Senate, were so far from being pretty much the same thing [*à peu-près la même chose*] that, by the unanimous Voice of the Centuries, and therefore by the Majority of the RICHEST, who were indeed the *Primores Civitatis*, SERVIUS was chosen to be KING, contrary to the Will of the SENATE.

And this shews how agreeable the Institution of Assemblies by Centuries was to the Body of the PEOPLE; by which word I here understand the COMMONS, all the Citizens who were not SENATORS.

Liv. lib. 1.  
cap. 47.

Again, Livy represents TARQUIN in the Senate-house making his Court to the FATHERS, by charging SERVIUS, as with a Crime, that he had introduced the CENSUS\*; and yet, without the CENSUS, the Centuriate Comitia could not have been constituted: We may well conclude, therefore, that this new Form of General Assembly was not agreeable to the FATHERS.

And indeed, from the very Constitution of such Assemblies, it would seem that the SENATORS, though, being of the FIRST CLASS, their own Votes were of more value than before, must have much less influence on the other Voters, than in Comitia Curiata; because their Senatorian dignity, as well as their Riches, would naturally give them, over the poor and indigent, an ascendant, which they could not so easily acquire over Citizens moderately rich or of barely competent fortunes.

When, after the Regifuge, great numbers of the Citizens of the inferior Classes were fallen into poverty, and were in Debt to the Senatorian families, who, with other rich usurers their adherents, had, through the passive indolence of the multitude, engrossed to themselves all the Wealth of the State, these may well be supposed masters of all the Public deliberations: But we find, that so soon as the Debts were cancelled †, and the COMMONS,

\* May we not hence conclude, that the Introduction of the Censur was a recent Act, and not 40, nor 20 years before this time, the very hour when SERVIUS was assassinated?

† When the poorer Citizens of Rome were again, through various misfortunes, plunged



COMMONS, by the Institution of the *Tribuneship*, had provided themselves with Protectors, against oppression from the Nobles, these Nobles were not able, either by their *Authority* or by their *Intreaties*, to defend CORIOLANUS\* from a sentence of banishment; and yet there had been no change made, with regard to the Privileges of the Voters, or the Value of their Votes, in the General Assemblies of the PEOPLE.

Concerning the manner of Admission into the SENATE  
under the CONSULAR Government.

THE Observations, contained in the foregoing Pages, do not regard the late EARL STANHOPE's Question, but so far as that Question may be thought determinable by ascertaining the Prerogative of the KINGS of ROME, with respect to the Creation of Senators.

Vid. supr. p. 1.

Dr. Middleton and Dr. Chapman are both of opinion, That the proper and absolute power of creating Senators ALWAYS resided in the PEOPLE; and that, during the *Regal State*, the PEOPLE did constantly exercise that power, did ALWAYS CHUSE the Members of the SENATE, as (by Dionysius's Account) they did at the first Institution of that Assembly in the time of Romulus:

Dr. Middleton's Treatise, p. 17. 30.  
Dr. Chapman's Essay. p. 23. 28. 29. 33.

plunged in debt, they again fell into a slavish dependance on their Creditors, i. e. on the wealthy Senators and other oppressive Usurers; nor did the body of the Roman People ever become truly FREE, till by the *Licinian Laws* (in U. C. 386) the Debts were once more cancelled, the Usurpers of the public Lands deprived of them, those Lands divided among the poor Citizens, and the way to the highest offices left open to merit, without regard to birth and pedigree.

\* *Ad eo infensa erat coorta Plebs, ut unius pœnæ desungendum esset Patribus. Liv. l. 2. c. 35. Restiterunt tamen adversa invidia, usque sunt, quâ suis quisque, quâ totius ordinis viribus.—Universi processere (quicquid erat patrum, reos diceret) precibus plebem exposcentes: unum sibi civem, unum senatorem, si innocentem absolvere nollent, pro nocente donarent. Ipse quum die dictâ non adesset, perseveratum in ira est. DAMNATUS ABSENS in Volscos exsulatum abiit, &c.*

See Rom. Hist. 3d edition, in quarto, Vol. I. p. 230, where the affair of Coriolanus, as related by Dionysius, is fully discussed, and the Historian's unjustifiable liberty of Inventing Facts is exposed. The whole TRIAL of CORIOLANUS before the PEOPLE seems to be a Romance contrived for no other end, than to give the Writer an opportunity of playing the Orator and Politician.

And

Treat. p. 17. And that "the KINGS acted, in this affair, but ministerially  
 Essay, p. 28. "and subordinately to the Supreme will of the PEOPLE;" that  
 30. 31. is, the Kings did no more than perform the office of Presiding  
 Magistrates at the Elections made by the PEOPLE, in their As-  
 semblies.

Treat. p. 37. Now (say these learned Gentlemen) "If the power of the  
 Essay, p. 45. "CONSULS was the SAME with that of the KINGS," then the  
 CONSULS acted but ministerially &c. But the Power of the  
 Consuls was the same &c. Therefore &c.

1. WELL; but how does it appear, *that the Power of the CON-  
 SULS was the SAME with that of the KINGS?* "ALL the ancient

Treat. p. 37. "Writers declare it," says Dr. Middleton.

Of those *ancient Writers* the Doctor cites only CICERO and  
 LIVY \*, who, to my apprehension, say nothing, to his purpose,  
 in the passages referred to: For it has been shewed, that, in all  
 probability, LIVY speaks, either strictly of the FIRST Consuls  
 only, or of those only who successively governed Rome, before  
 the erection † of the *Tribunitian Power*.

And that CICERO ‡ makes the *Regal Power* continue with the  
 CONSULS no longer than till the Creation of the first TRIBUNES  
 of the COMMONS, is manifest, beyond a doubt, from the words  
 that precede, and the words that follow, those which the Doctor  
 has inserted in the margin of his Treatise.

Vide supra,  
 p. 106.

BUT supposing it were proved, "that the Power of the  
 CONSULS was the SAME with that of the KINGS,

\* The Passages referred to, by the Doctor, are these.

Libertatis autem initium inde magis, quia annuum imperium Consulare factum  
 est, quam quod deminutum quicquam sit ex Regia potestate, *Omnia jura, omnia  
 insignia PRIMI CONSULES* tenuere. Liv. lib. 2. cap. 1.

[Dr. CHAPMAN, who employs this same passage from Livy, adds, from *Dio-  
 nysius*, Ἀνδρας ἀπειραις ΤΟΤΕ ΠΡΑΞΟΝΤΑΣ ΟΣΑ ΒΑΣΙΛΕΥΕΙΝ ΕΞΗΝ.  
 Lib. 4. cap. 84.]

REGIO IMPERIO DUO SUNTO &c. Cic. de Leg. lib. 3.]

† "Sed quoniam regale Civitatis Genus probatum quondam, postea non tam  
 "regni, quam Regis vitiis repudiatum est, *res manebat*, cum unus omnibus  
 "magistratibus imperaret. Cic. de Leg. 3." Had the Doctor produced the  
 whole passage (which the Reader will find by turning back to p. 106) it would  
 have appeared that the CONSULS, under whom CICERO says, *res manebat*, were  
 those only, whose Magistracies were anterior to the Institution of the TRI-  
 BUNESHIP.

2. WHAT



2. WHAT Proof is there, that the KINGS \* had not the Prerogative of creating Senators? "I must confess (says DR. MID-  
 "DLETON to LORD HERVEY) that, as far as our argument is  
 "concerned with the Regal Government of Rome, your Lordship  
 "has the LATIN WRITERS on your side, who constantly speak of  
 "the Creation of Senators, as a Branch of the Royal Prerogative."  
 But then the Doctor contends, that we ought to prefer Dionysius  
 to all those writers, they being but witnesses of a NEGATIVE † kind,  
 and the Greek Rhetorician being a POSITIVE Evidence, and one  
 who searches ‡ things to the bottom.

Vide supra,  
 p. 78.

† Vide supra,  
 p. 80.

Should this be granted, what POSITIVE testimony has the  
 Doctor produced from DIONYSIUS, that the PEOPLE, and not  
 the KINGS, had the Prerogative of making Senators? None at  
 all; as we have before || observed.

|| Vide supra,  
 p. 116.  
 Treat. p. 37.

Nor, when the Doctor confidently says, "It is certain, that the  
 "Power of the PEOPLE was always superior to them both" [i. e.  
 to the Power both of the KINGS and of the CONSULS] does he produce  
 any Authorities for this; he gives us nothing in his Margin to  
 support the Assertion; and there are several Passages in his Text  
 which seem to stand in some degree of opposition to it.

"It is agreed by all, that Romulus instituted the Comitia  
 "Curiata—and that the matters subjected to their decision,  
 "were, the Choice of all the Magistrates, and the Right of  
 "making Laws, War and Peace. An ample Jurisdiction, and in  
 "the most important articles of Government; yet not wholly  
 "absolute, as Dionysius says, unless the SENATE concurred with  
 "them.

p. 25.

\* Mr. Vertôt, who differs from the two Doctors, concerning the Power of  
 the Consuls, makes use of the same medium, the supposed Equality of the Powers  
 of the KINGS and CONSULS, to come at his Conclusion. He thinks it evident,  
 that the KINGS had the Prerogative of creating Senators, and taking it for granted,  
 that the Power of the CONSULS was the same with that of the KINGS, he con-  
 cludes, Therefore the CONSULS &c.

Vide supra,

† Of the Discoveries he made by his Researches, we have seen some specimens p. 9.  
 in the foregoing chapter, and elsewhere §; such specimens as may perhaps induce §  
 some Readers to think (whatever may be the judgment of all the best Critics ||) P. 22.  
 that HIS very reporting a fact, affords a presumption that it is not true (if it be  
 not mentioned by any other ancient writer;) and especially where the Rhetorician  
 is minute and circumstantial, in his relation, and finds an opportunity of  
 showing his parts, in laboured speeches, long and dull.

Vide supra,  
 p. 80.

“ The

Treat. p. 33.

—“ The KINGS indeed, by virtue of their office, must needs  
 “ have had a great \* influence over the Deliberations of the  
 “ People. It was THEIR PREROGATIVE to call the People to-  
 “ gether; to preside in their Assemblies; to PROPOSE the Affairs to  
 “ be debated; or the Persons to be elected; and to deliver their own  
 “ opinion the first †.

† D. H. l. 2.

P. 14.

Treat. p. 110.

—“ By the original Constitution of the Government, even under  
 “ the KINGS, the Collective Body of the PEOPLE WAS THE REAL  
 “ SOVEREIGN OF ROME, and THE PERNIER RESORT in all  
 “ Cases. But their Power, though SUPREME and FINAL, was  
 “ yet qualified by this check, that they could not regularly enact any  
 “ thing which had not been PREVIOUSLY considered and approved  
 “ by the SENATE. This was the foundation of the Senatorian  
 “ Power, as we find it set forth, in one of their first decrees,  
 “ concerning the Choice of a KING, where it is declared, that  
 “ an Election made by the People should be valid; provided, that  
 “ it was made with the Authority of the Senate ‡: and NOT ONLY  
 “ IN THIS CASE, BUT IN ALL OTHERS, THE SAME RULE WAS

Vide supra,  
 P. 97.

\* Dr. Chapman in his Essay (p. 28, 29) speaks of the great influence which the KING had, as presiding Magistrate, in the General Assemblies.

—“ I think there is reason to conclude, that the Choice of Senators be-  
 “ longed to the People, and that the Power of the KING, in this case, was  
 “ pretty much the same with that of the presiding Magistrates in other Elec-  
 “ tions. Nor was this Power very inconsiderable — the principal Magistrate, if  
 “ he saw good reasons against admitting a Candidate, sometimes prevailed with  
 “ the People to shew no regard to the application of so improper a person;  
 “ and sometimes he induced the Senate to preclude him from petitioning by  
 “ their Decree; or, if he thought proper, he did the same by his own Authority, as  
 “ by refusing to receive the name of the Candidate, which was generally necessary, in  
 “ order to his being chose, dissolving the Comitia, or refusing to declare the Election.  
 “ Such was the power of the presiding Magistrate in elections in general, and  
 “ such must also the power of the KING have been, in that of Senators in par-  
 “ ticular. For as he had the sole power of assembling the People, they could  
 “ not chuse into the Senate without his permission &c.”

N. B. There is no proof, that any of the KINGS ever presided at an Election of Senators, made by a General Assembly of the PEOPLE: Nay, in the instances, where it is pretended by *Dionysius*, that King Romulus referred the Choice of Senators to the *Curia*, it is not to the PEOPLE assembled by *Curia*. Vide supra, p. 142.

† Patres decreverunt, ut cum Populus Regem jussisset, id sic ratum esset, si patres auctores fierent. Liv. lib. 1. cap. 17.

Numam Pompilius — Populi jussu, Patribus auctoribus Romæ regnasse. Id. 4. 3.  
 Inde Tullum Hostilium — Regem Populus jussit. Patres auctores facti. Id. 1. 22.

“ OB-



" OBSERVED FOR MANY AGES; and when one of the Tribuns, in contempt of it, ventured to propound a Law to the People, on which the Senate had not first been consulted, all his Collegues interposed and declared, *that they would not suffer any thing to be offered to the suffrage of the Citizens, till the Fathers had passed a judgment upon it.* And this indeed continued to be the general way of proceeding in all quiet and regular times\*, from the beginning of the Republic to the end of it: And the constant stile of the old writers, in their accounts of the public Transactions, is, that the Senate *voted or decreed,* and the People *commanded* † such and such an act.

" Since *nothing* therefore, *which related to the Government,* could be brought before the PEOPLE, till it had been EXAMINED by the SENATE &c."

We see then that this *real Sovereign of Rome*, this PEOPLE, (who, by the Laws and Constitution of the Government, had the *absolute Dominion* ‡ over all) could not, in their own Assemblies, † Treat. p. 113. propose any thing to be enacted, because it was the KING's prerogative to propose; nor could they enact any thing that was proposed by the KING, unless the SENATE concurred with them.

\* Dr. Middleton, in the Preface to his *Life of Cicero*, speaks to the same effect.—"The true balance and temperament of Power between the Senate and the People, which was generally observed in regular times, and which THE HONEST wished to establish in all times, was, that the SENATE should be the authors and advisers of ALL the Public Counsils, but the PEOPLE give them their sanction and legal force."

It will readily be granted, that, in regular times, that is, in times, when, there being an equal balance of power between the Senate and People, domestic feuds and disturbances, occasioned by Inequality, ceased, the PEOPLE, as it was natural, did generally suffer the SENATE, composed of experienced Magistrates, to be the Authors of the Public Counsils: But that it was the wish of the HONEST, that in no time, not in times of Inequality, there should be any public Counsils, but what came from the SENATE, cannot be allowed: For, had there been no other, the way to the Magistracies of the Republic, and of course (according to the Doctor) into the SENATE, would never have been laid open to the Plebeian families, to the virtue and industry of every private Citizen; nor, consequently, would the Government of Rome have ever been brought to what the Doctor calls its perfect state. In labouring and compassing this point, he grants, that the TRIBUNES acted like TRUE PATRIOTS.

† Senatus eam pacem servandam censuit, et paucos post dies Populus jussit. Liv. lib. 37. cap. 55.

Ex auctoritate Patrum jussu Populi, Bellum Faliscis indictum est. Id. l. 10. c. 45.

C c

By

Essay, p. 20,  
21.

By the SENATE's concurrence, the Doctor understands, their PREVIOUS examination and approbation of the thing proposed.

Dr. CHAPMAN has a different notion of Concurrence. "The power of electing Magistrates, enacting Laws, and making Peace or War, was granted to the PEOPLE [by that CONSENT \* of the PEOPLE (I suppose) which was THE SOURCE OF ALL POWER AT ROME.] But these Powers they could not properly exercise, without the permission of the KING, and much less without the CONCURRENT AUTHORITY of the SENATE; FOR the determinations of the PEOPLE, in their Assemblies, which were held by Curias, were AFTERWARDS referred to the SENATE, in order to be RATIFIED by their Decrees."

p. 299.

And again; "That it was the constant and inviolable practice, for the first three hundred years, to have every Law RATIFIED by the SENATE, as well as solemnly enacted by the People in Comitia, is evident &c."

Here then the two Doctors differ, Dr. Chapman not admitting what Dr. Middleton asserts, viz. that the Power of the People was final; yet, in the affair of War, Dr. Chapman thinks, that it was the part of the Senate to decree, and of the People to ratify.

p. 320.

"The power of making War and Peace was not exercised by the People, without the Concurrence and Approbation of the SENATE. When the Romans received an injury from a neighbouring nation, the constant practice was to demand satisfaction in form by a Fecialis or Herald; and if this was denied the person who had been dispatched upon that Embassy, attended by the rest of his Brethren of the College of Heralds, came and informed the SENATE, that every previous step had been taken, that was required by the sacred Laws; and that, therefore, they were no longer restrained, by any religious Considerations, from denouncing war, if they thought proper. In consequence of this, a DECREE for that purpose was generally passed, and then carried to the PEOPLE, in order to be RATIFIED by their Suffrages in the Comitia Centuriata."

Vide supra,  
p. 111, 2, 3, 4.

"The very FORM †, in which war was usually proclaimed, implies

\* Essay &c. pag. 23, et vide supra, p. 31.

† [N. B. The FORM in which war was usually proclaimed, and the whole proceeding, when Satisfaction was to be demanded for Injuries received, may be found



"implies the Concurrence of both Orders; and, indeed, if the  
"CONSENT of the SENATE had not been DEEMED FULL AS  
"NECESSARY as that of the PEOPLE, there could have been very  
"a little pretence for the Incroachments of the former upon the  
"Power of the latter."

I ought not to neglect taking notice, that though the Consent of  
the Senate, is here said by the Doctor to have been deemed full as  
necessary as that of the People, to a declaration of war, yet he  
seems not to think that the SENATE'S Consent was originally and  
constitutionally necessary to any Public Act. For, in another part  
of his Essay, he writes thus:

p. 294. 296.  
297.

— "If we attentively consider the nature of the Constitution,  
"as it was settled at first—it seems to have been their proper  
"business [the business of the SENATE] merely TO ADVISE; but  
"as Direction comes close upon the heels of Advice, and power  
"and influence are the natural effects of superior wisdom, their  
"APPROBATION, which at first perhaps was only esteemed the best  
"recommendation of a popular Act, was interpreted afterwards as  
"necessary to give it a legal force and validity. Hence the FA-  
"THERS are only stiled the AUTHORS or ADVISERS of such Acts,  
"whilst the People, in their collective Capacity, are said to WILL  
"and COMMAND: and when the latter are disposed to take any  
"particular steps, without the Concurrence of the former, the  
"warmest advocates for the Privilege of the SENATE, plead for  
"this [privilege, I suppose, of being advised with] as a mark of  
"deference and respect, which had been constantly paid them,  
"but not as any strict and constitutional Right."

Both the learned Doctors take notice, that when the Act or  
Determination of the PEOPLE is to be expressed, it is *Populus  
jussit* [the PEOPLE commanded], but that the SENATE, in a public  
Act, are concerned only, as *Auctores* [Advisers]; and Dr. Chapman  
observes\*, from *Suetonius* and *Cicero*, that "such persons as re-  
"commended to the PEOPLE, or *persuaded* (as they called it)

found in p. 111 and 112 of the foregoing Observations; and in that account  
there is no intimation, that when the SENATE had passed a DECREE for making  
War, this DECREE was carried to the PEOPLE to be ratified by their suffrages.]

\* Essay, p. 296, in a Note.

"any particular Laws, are stiled *Auctores* \*, in the same sense as the Senate in general."

As to the distinction of *jussus* Populi, and *auctoritas* Patrum, I apprehend, that, when these expressions are employed, in speaking of the Acts of the PEOPLE and SENATE, during the Regal State, no greater degree of Power is implied in the word *jussus*, than in the word *auctoritas* †.

This Conjecture seems to be supported by LIVY's account of the Transaction, which gives him the first occasion of using those Phrases.

After the death of ROMULUS, and a year of INTERREGNUM, when the PEOPLE, discontented with the Government of the FATHERS, were going to chuse a KING without consulting them, the SENATE prevented the proceeding, by a DECREE, importing a *Permission* to the PEOPLE to elect a KING, and a *Promise*, of confirming the PEOPLE's Choice, in case they made a good one: A DECREE, with which the COMMONS were so highly pleased, that, not to be outdone in Complaisance, they remitted the Choice in question to the FATHERS ‡.

Vide supra,  
p. 97, 98, 99.

The SENATE had, at this time, the possession of all power

\* Cæterum Cæcilio Metello, tribuno plebis, turbulentissimas leges adversus collegarum intercessionem ferente, *auctorem* propugnatoresque se pertinacissime præstitit. Sueton. Jul. cap. 16.

Agria Lex à Flavio tribuno plebis vehementer agitabatur, *auctore* Pompeio. Cic. ad Attic. Lib. 1. Ep. 19.

† The words *jussit* and *jussus* are not appropriated, by the ancient writers, to the Acts of the PEOPLE, but are employed to express also the Decrees of the SENATE, as appears by several passages inserted in the margin of Dr. Middleton's Treatise, where he speaks of this distinction.

Ex auctoritate Senatus latum ad Populum est, nequis Templum aramve *injussu* Senatus, aut Tribunorum pl. majoris partis dedicaret. Liv. lib. 9. cap. 46.

Quamobrem Sibyllam quidem sepositam habeamus, ut *injussu* Senatus ne legantur quidem libri. Cic. de Div. 54.

Quoties Senatus Decemviros ad libros ire *jussit*. Ib. 1. 48.

I have not observed that, in LIVY's History of the Roman Kings, the words *jussit* or *jussus* are ever applied to the People, but when they elect a KING; and in the FORM (introduced by Ancus Marcius) of denouncing War. In that FORM it is said—Quod populus Romanus Quiritium bellum cum priscis Latinis *jussit* esse; Senatusque Populi Romani Quiritium *consuit*, *consensit*, *consecvit*, ut bellum cum priscis Latinis fieret &c. Concerning this matter, vide supra p. 111, 112.

‡ *Annuum intervallum regni fuit* &c. The whole passage is transcribed above, in p. 98.

in



in the State; and the Historian intimates to us, that when, by the Decree above mentioned, they permitted to the PEOPLE what he calls Summa Potestas [*summâ potestate Populo permissâ*] it was a Grant of no higher prerogative, than what they retained to themselves [*ut non plus darent JURIS, quam retinerent.*] So that whatever difference of force there might be in the words *jussus*, and *auctoritas*, when applied respectively to the PEOPLE and SENATE, in the times of the FREE STATE; there appears no reason to believe, that the power of the PEOPLE, though naturally superior to that of the SENATE, was legally and constitutionally so, before the Establishment of the Commonwealth.

On the contrary, it would seem, even by the account which Dionysius himself \* gives of the first settling the respective powers and privileges of the Three Estates, that the power of the SENATE was superior to that of the PEOPLE, and the power of the KING † superior to both ‡. But have we in reality sufficient reason to believe,

\* Vide supra, p. 89, 90, where is transcribed, from Dr. Chapman's Essay, the substance of Dionysius's account of this matter.

† Vide supra, p. 110. the note.

‡ Κατανοηθέντος δὲ ταῦτα, διεκρίνε τὰς τιμὰς καὶ τὰς ἐξουσίας ὡς ἑκάστης ἐδούλετο D.H. p. 87. εχειν.

Βασιλεὺς μὲν ἐν ἐξῆρτο ταδε τὰ γέγραπται πρῶτον μὲν, ἱερῶν καὶ θυσιῶν ἡγεμονίαν εἶναι, King. καὶ πάντα δι' ἐκείνου πράττεσθαι τὰ πρὸς τοὺς θεοὺς ὅσα ἐκείνῳ νόμων τε καὶ πατριῶν ἐπισμῶν φυλάκην ποιεῖσθαι, καὶ πάντος τὸ κατὰ φύσιν ἢ κατὰ συνθήκας δίκαια προνοεῖν, τῶν τε ἀδικημάτων τὰ μέγιστα μὲν αὐτοῦ δικάζειν, τὰ δὲ ἐλαττοῖνα τοῖς βουλευταῖς ἐπιτρέπειν, προνοούμενον ἵνα μὴδὲν γεννιᾶται περὶ τὰς δικὰς πλῆμμελες. βουλὴν τε συναγεῖν, καὶ δῆμον συγκαλεῖν, καὶ γνῶμης ἀρχεῖν, καὶ τὰ δοξάντα τοῖς πλείοσιν ἐπιτελεῖν. ταῦτα μὲν ἀπέδωκε βασιλεὺς τὰ γέγραπται, καὶ ἐπὶ πρὸς τοῖς, ἡγεμονίαν αυτοκράτορα ἐν πολέμῳ.

Τῷ δὲ συνεδρίῳ τῆς βουλῆς τιμὴν καὶ δύναμιν ἀνέθηκε τοιανθε, περὶ πάντος ὅτε ἐν Senate. εἰσηγῆται βασιλεὺς, διαγιγνώσκων τε καὶ ψήφον ἐπιφέρειν καὶ ὅ,τι ἐν δοξῇ τοῖς πλείοσι τὸτο νικᾷ ἐκ τῆς Λακωνικῆς πολιτείας καὶ τὸτο μετενεγκάμενος, ἃς γὰρ οἱ Λακεδαιμονίων βασιλεῖς αυτοκράτορες ἦσαν ὅ,τι βούλοιντο πράττειν, ἀλλ' ἡ γερουσία πάν εἶχε τῶν κοινῶν τὸ κράτος.

Τῷ δὲ δημοτικῷ πλεῖστοι τὰ ταῦτα ἐπέτρεψεν, ἀρχαίρεσθαι τε καὶ νόμους ἐπικυρῶν, People. καὶ περὶ πολέμου διαγιγνώσκων, ὅταν ὁ βασιλεὺς εἴη, ἃς τῶν ἐχόντων τὴν ἐξουσίαν ἐπιληπῶν, [*leg. ἀνεπιληπῶν*] ἀν μὴ καὶ τῇ βουλῇ ταῦτα δοκῇ. ἐφέρει δὲ τὴν ψήφον ἐκ ἅμα πᾶς ὁ δῆμος, ἀλλὰ κατὰ τὰς φράδας συγκαλεσμένους ὅ,τι δὲ ταῖς πλείοσι δοξοῖ φράσαις, τὸτο ἐπὶ τὴν βουλὴν ἀναφέρεται. ἐφ' ἡμῶν δὲ μετακινᾶται τὸ εἶδος. οὐ γὰρ ἡ βουλὴ διαγιγνώσκει τὰ ψφισθέντα ὑπὸ τῇ δῆμῳ, τῶν δ' ὑπὸ τῆς βουλῆς γινωσκέντων ὁ δῆμος ἐπὶ κύριος.

His constitutis, distribuit honores et potestates, quas unumquemque habere volebat.

Ac REGIS quidem hæc munia eximia esse iussit: primum, ut sacrorum, et sacrificiorum principatum haberet, et omnes res divinæ ac piæ per eum agerentur.

Deinde,

believe, that there was any such settling of powers and privileges? Dionysius, to make Romulus (a boy of 17 or 18 years of age)

appear. Deinde, ut legum et morum patriorum custos esset, et omnis juris naturalis, et ex communi hominum consensu pactoque scripti curam gereret; et de gravissimis injuriis ipse cognosceret, leviorum vero causarum cognitionem Senatoribus permetteret; ita tamen ut caveret ne quid interim in iudiciis peccaretur; et Senatum egeret, Populumque convocaret, primumque sententiam diceret, quaque pluribus visa fuissent, ea faceret. Atque hos honores regi detulit; præterea vero, ut in bello summum haberet imperium.

CONSENSUI vero SENATUS hunc honorem et potestatem dedit, ut de re qualibet, quam Rex ad ipsum retulisset, cognosceret et suffragium ferret; et quod plurium sententiis approbatum fuisset, id vinceret: atque hoc quoque ex Laconica Republica desumptum est. Neque enim Lacædæmoniorum reges summum habebant imperium, ita ut quicquid libuisset facerent: sed summa totius reipublicæ administratio penes Senatum erat.

PLEBI vero [τῷ δὲ δημοτικῷ κληθεὶ] hæc tria concessit magistratus creare, leges sancire, et de bello decernere, quoties Rex permisset; ita tamen, ut ne horum quidem absolutam haberet potestatem, nisi idem Senatui visum fuisset. Suffragia autem ferebat non simul totus populus, sed per curias convocatus: quod vero plures Curie comprobassent, id ad Senatum referebatur. Sed nostra ætate hæc consuetudo est mutata. Neque enim Senatus cognoscit de Plebiscitis, sed Senatusconsultorum ipse populus est arbiter.

D. H. p. 392.

—Ἰς δὴ πᾶσι νομοῖν ἡμῶν ὑπαρχόντα ἐξ οὗ τινος οὐκ ἔστιν ἡ παλαιὰ, παλαιὰ εἶναι κυρία τὴν βουλὴν, πλὴν ἀρχαῖς ἀποδείξει, καὶ νομῶς ψήφισαι, καὶ πολέμου ἐξενεγκεῖν, ἢ τοῦ συνεστώτα κατὰ λυσασθαι τῶν δὲ τῶν τριῶν τὸν δῆμον εἶναι τὴν ἐξουσίαν, ψῆφον ἐπιφέρειν. ἐν δὲ τῷ παρόντι καὶ ὑπὲρ ἑτέρου τινος ἢ πολέμου καὶ εἰρήνης βουλευόμεθα ὥστε πολλὰ ἀνάγκη τὸν δῆμον ἐπικυρώσαι τὰς ἡμετέρας γυνώσκας, ψῆφον γενομένην κυρίαν.

Scitis nobis esse, jam inde ab urbe condita legem, quæ rerum omnium summam senatus potestati permittit præter magistratum creationem, legum lationem, et belli vel inferendi, vel finiendi arbitrium: horum enim trium potestatem esse penes suffragia populi. In præsentia vero de nulla alia re quam de bello et pace consultamus: quare omnino necesse est ut populus, harum rerum dominus, ac summus arbiter, sententias nostras suffragiis suis ratas faciat. Hudson.

Vide supra,  
p. 125.

From these two passages of our Rhetorician's *Roman Antiquities*, it seems pretty evident, that *Fidelity* and *Exactness* are very far from being his true *Characteristic*.

In the former of these extracts we see, that he gives all the EXECUTIVE POWER to the KING; in the latter, he gives it to the SENATE, from the very foundation of the City.

By his account, in the former, the DETERMINATIONS of the General Assemblies of the People, in the Election of Magistrates, and in making Laws, War and Peace, were, by the original Constitution of the Government, to be referred to the SENATE for approbation and confirmation. By his account in the latter, the PEOPLE were the dernier resort, and the DECREES of the SENATE were to be referred to the PEOPLE for ratification.

He tells us, in the former, that King Romulus, reserving to himself the Cognizance of all the weightier Criminal Causes, left the rest to the Senators.

In



appear a compleatly wise and great man, represents him as a wonderful Politician, thoroughly acquainted with the Constitutions of Government in all the Græcian States; of which, if we may judge from his Education, he probably knew no more than he did of *Tartary*, or *China*.

And as to any *original Contract* between the first Romans and King Romulus, or what Dr. Middleton and Dr. Chapman call the *Original and Fundamental Constitution of the Roman Government*; if they mean any thing more, than that the lawless Crew of Romulus, as they gradually settled into a regular Community, adopted the Laws and Customs of ALBA, I take it to be a meer Dream. The builders of the new City, the first gang of Roman banditti, do not seem to have been qualified for building new Systems of any sort: if they were able to copy tolerably well the Government they had before their eyes, this was as much as could reasonably be expected from them. Now, as we have before observed, the Government of ALBA was *Hereditary Monarchy*. The Alban Kings had probably a great Council, which they called the *Senate*; and the People, we may suppose to have had *privileges*, without ascribing to them a Power superior to that of their Kings, or to that of the Senate.

Vide supra,  
P. 92.

In contradiction to this, he tells us, in his fourth Book, that all the Predecessors of King SERVIUS TULLIUS had engrossed to themselves the Cognizance of ALL Causes, public and private; and that SERVIUS, separating the Public from the Private, reserved to himself the Cognizance of Crimes against the State, but left the Judgment of private Causes to private men [the Senators:] and he afterwards makes this KING, in a long speech, remind the SENATORS of his having parted with that branch of his Prerogative, and given it up to them.

p. 228, 229.  
p. 239.

Τὸν γὰρ πρὸ αὐτοῦ βασιλεὺς ἀπάσας ἀξιῶντων ἐφ' ἑαυτοῦ ἀγειν τὰς δίκας, καὶ πάντα τὰ ἐγκληματὰ τὰ τε ἴδια, καὶ τὰ κοινὰ πρὸς τὸν βασιλῆα προσην δικάσειν, ἐκεῖνος διελὼν ἀπὸ τῶν ἰδιωτικῶν τὰ δημόσια, τῶν μὲν εἰς τὸ κοινὸν φερομένων ἀδικημάτων αὐτὸς ἐποίητο τὰς διαγνώσεις, τῶν δὲ ἰδιωτικῶν ἰδιώτας ἐτάξεν εἶναι δικάζοντας. &c. p. 228, 229.

Quum enim omnes superiores Reges omnium litium judicia ad se transferri vellent et de omnibus tam privatis, quam publicis causis arbitrato suo cognoscerent; ille, separatis publicis à privatis, ipse quidem de criminibus ad remp. pertinentibus cognoscebat: privatorum vero iudices privatos constituit, &c. Hudson.

—“Τὸν τε ἀδικημάτων οὐχ' ἀπάσων ἐγένομην δικάστης αὐτός, ἀλλὰ τὰ ἰδιωτικά υμῖν ἀπέδωκα διαγινώσκειν, ὃ τῶν βασιλευσθεῶν οὐδεὶς ἐποίησε βασιλεὺς. &c.—“ Neque omnium criminum iudicium usurpavi; sed quod nullus superiorum regum fecerat, vobis privatorum criminum cognitionem permisi. &c. p. 239.

A writer of uncommon talents, in an admirable work, published not long since, observes, "that the People may, without contradiction, be said to have many Privileges, in an absolute Monarchy; and that in all the European Monarchies, the People have privileges," (he adds, "but whether dependent or independent on the will of the Monarch, is a question that, in most Governments, it is best to forbear.") To this if we add a passage, which the same Author has transcribed from Sir Walter Raleigh's *Maxims of State*, we shall perhaps have something that *approaches* very near to the real Constitution of the Roman Government, so soon as the Government came to have a Constitution. "In every just State some part of the Government is, or ought to be, imparted to the People, as in a Kingdom, a Voice and Suffrage in making Laws; and sometimes also of levying of Arms (if the charge be great, and the Prince forced to borrow help of his subjects) the matter rightly may be propounded to a Parliament, that the tax may *seem* to have proceeded from themselves. So Consultations and some Proceedings in judicial matters may, in part, be referred to them. The reason, lest, seeing themselves to be in no number nor of reckoning, they mislike the State or Government \*."

To conclude this Article. It seems probable, from many facts and authorities mentioned in the foregoing Observations, that the Power of the KINGS of Rome was absolute and uncontrollable [nobis Romulus ad libitum imperitaverat]; that, nevertheless (if we except *Romulus*, in the latter part of his reign, *Servius Tullius*, and *Tarquin the Proud*) the Kings did, generally speaking, advise with the SENATE on affairs of a public Concern; and did sometimes take the opinion of the Multitude, who had the privilege of giving their Suffrages on such matters, *as often as the KING permitted them so to do*, [ὅταν ὁ βασιλεὺς ἐφη:]; But that neither *Jussus Populi*, nor *Auctoritas Patrum*, (in the sense those expressions were used, after the establishment of the Republic) was necessary to give Validity to a Law, made by the KING.

3. BUT, *thirdly* (to return to the *Creation of Senators*) should we suppose, that, both under the KINGS and under the CONSULS, the Power of creating Senators was constitutionally vested in the

\* HUME's History of Great-Britain, Vol. I. Chap. vi.

PEOPLE,



PEOPLE, how does it appear, that the PEOPLE constantly exercised that Power, which is what the two learned Doctors contend for?

In the first Section of the second Part of Dr. Middleton's Treatise, he has mentioned nine "principal Articles, in which the SENATE had constantly exercised a peculiar Jurisdiction, exclusive of the PEOPLE; not grounded on any express Law, but the Custom only, and Practice of their Ancestors, derived to them from the earliest ages—it was suffered by the tacit consent of the PEOPLE [who yet, by the Laws and Constitution of the Government, had the absolute Dominion \* over all] to continue in the hands of the SENATE, as a matter of Convenience rather than of Right, and connived at, rather than granted, for the sake of the common good." Treat. p. 115, 6, 7, 8. p. 113.

Among these Powers, assumed and exercised by the SENATE, the Doctor mentions "a Power not onely of interpreting the Laws, but of absolving men from the obligation of them, and even of abrogating them †." Now,

† "Senatus quidem cujus est gravissimum judicium de jure legum, [Cic. pr. Dom. 27.] Quatuor omnino genera sunt, in quibus per Senatum, more majorum, statuatur aliquid de legibus. Unum est ejusmodi, placere legem abrogari—Alterum, quæ lex lata esse dicatur, ea non videri populum teneri. pr. Cornel. I. Vid. Cic. pr. leg. Manil. 21. de Pompeio legibus ex Senatus consulto soluto. De Scipionibus legibus solutis. Val. Max. 8. 15. it. Cic. Phil. 5."

The Author of the Treatise *De l'Esprit des Loix* does not seem to have observed this easiness of the PEOPLE, with regard to Legislation.

"L'état des choses [he speaks of the times of the Commonwealth] demandoit, Vol. I. p. 174. que le Senat eut la direction des affaires. Le Peuple disputoit au Senat toutes les branches de la puissance législative, parce qu'il étoit jaloux de sa liberté; il ne disputoit point les branches de la puissance exécutive, parce qu'il étoit jaloux de sa gloire." And, a few lines before, "Si le Peuple fut jaloux de la puissance législative, il le fut moins de sa puissance exécutive. Il la laissa presque toute entière au Senat, et aux Consuls, et il ne se réserva guère, que le droit d'élire les magistrats, et de confirmer les actes du Senat et des généraux."

It has been already observed, that, granting the Report of Dionysius, concerning Romulus's leaving to the PEOPLE the Election of Senators, in two instances, to be true (which yet is in no degree probable) it does by no means follow, that it was the Prerogative of the People to elect the Senators; or that the Senators were constantly elected by the People. It does not appear that Dionysius believed either of these: vide supra, p. 116. His silence, as to the People, when he relates that Tarquin the Elder brought 100 new members into

*Observations on Dr. MIDDLETON's Treatise,*

Now, if this were so, if the PEOPLE did *facitly* consent to the SENATE's *constantly* \* *exercising* such, seemingly, dangerous Powers, what difficulty can we have to believe, that the PEOPLE, supposing the Power of creating Senators to have been *originally* and *constitutionally* vested in *them*, might have *constantly* left the *exercise* of that Power, first, to the KINGS, then to the CONSULS, and afterwards to the CENSORS? Since, by Dr. Middleton's Concession, the LATINE WRITERS do "*constantly speak of the Creation of Senators, as a branch of the Royal Prerogative,*" surely the least we can infer from such testimony, is, That the KINGS *exercised* the Prerogative of making Senators, whether it was constitutionally vested in them or not; and, if the KINGS, then the CONSULS, till the establishment of the CENSORSHIP, and, after that, the CENSORS.

And this brings us back to Earl Stanhope's Question,

WHAT WAS THE COMMON AND REGULAR MANNER OF ADMISSION INTO THE SENATE DURING THE FOUR OR FIVE FIRST AGES OF THE COMMONWEALTH?

WHEN Dr. Middleton, in his *Treatise*, comes to the CONSULAR STATE of ROME, he writes thus:

Treat. p. 35.

"UPON this memorable change of Government, and the expulsion of their KINGS, effected with such spirit and resolution

the Senate, is a better reason for thinking, that, in the opinion of the Historian, the Prerogative of making Senators was vested in the King, than his relating the indulgence and condescension of Romulus in those two instances, is to induce us to think otherwise.

I said *indulgence* and *condescension*. LIVY gives us a remarkable instance of a Magistrate's courting the goodwill of the PEOPLE, by declining to exercise his Prerogative, and making the PEOPLE judges of a Cause, which he had a right to decide, without appeal. It was C. Julius, one of the first DECENVIRS. Moderationis eorum argumentum exemplo unius rei notasse, satis erit. Quum sine provocatione creati essent, defosso cadavere domi apud P. Sestium patricie gentis virum invento, prolatoque in concionem, in re juxta manifesta atque atroci, C. Julius Decemvir diem Sestio dixit; et accusator ad populum extitit, cujus rei judex legitimus erat; decessit jure suo, ut demptum de vi magistratus populi libertati adjiceret. Lib. 3. cap. 33.

\* Is not this a sufficient answer to what Dr. Middleton urges in p. 32 of his *Treatise*? That "*when these Rights* [of making Laws, War, and Peace, with the choice of all their Magistrates] *had been once granted and possessed by the People, it is not credible that they would ever suffer themselves to be deprived of them.*" Vide *supra*, p. 83.



" by an injured People, for the recovery of their just Rights,  
 " we may expect to find them in the possession of every privilege,  
 " lege, which they could legally claim. For our reason would  
 " suggest, what all Authors testify, that in the beginning, and  
 " unsettled state of this Revolution, great complaisance and deference  
 " would necessarily be paid by the SENATE to the body of the COMMONS. I shall examine then what FACTS and  
 " TESTIMONIES may be alledged in favour of my opinion,  
 " during this first period of the Consular Government, till the  
 " creation of the CENSORS, which includes the space of *sixty* Treat. p. 36.  
 " *seven years.*

" The first exercise of the PEOPLE's power was, to elect two  
 " CONSULS, to supply the place of the ejected KING: who were  
 " now chosen, as they were ever after, in the *Comitia Centuriata*,  
 " or by a Vote of the PEOPLE, assembled in their *Centuries*,  
 " according to the Institution of *Servius Tullius*: and the first  
 " care of the new CONSULS was, to secure to the People *all their*  
 " *Rights*, which their late King *Tarquin* had violated; particularly  
 " *the Decision of all the great Affairs of State in their public*  
 " *Assemblies.*"

If, by *all their Rights*, the Doctor means *those Privileges which*  
*SERVIVS TULLIVS*, in his Scheme of a future DEMOCRACY, had  
 allotted to them, it is highly probable, that the People were flattered  
 with the hope of these [*multa blandimenta Plebi per id tempus*  
*à Senatu data:*] But for many reasons (given in the foregoing  
 pages of this Discussion) it seems hard to believe, that the People  
 had, at any time, under the KINGS [*Populum Romanum ser-* Liv. 1.2. c. 12.  
*vientem quum sub regibus esset*] *the Decision of all the great*  
*Affairs of State.*

The Doctor, proceeding, relates the Story of VALERIUS's *Vide supra*,  
 demolishing his House, and of his lowering the Consular Fasces, p. 105, 106.  
 in an Assembly of the People: after which relation——

" THIS was the state of things in the Infancy of the Republic; Treat. p. 38.  
 " in which the People were much caressed by the Nobles, as long  
 " as there was any apprehension of danger from their deposed  
 " King, or his family: and in these circumstances, the SENATE,  
 " which had been reduced, by TARQUIN's arbitrary reign, to  
 " half \* its legal number, was filled up to its former comple- \* *Vide supra*,  
 " ment P. 52, 53.

\* Vide supra, p. 54, 55. "ment \* of THREE HUNDRED, by Brutus and Valerius, or by one or the other of them, as writers differently relate it. All that Dionysius indeed and Livy say upon it, is, that a number of the best Citizens were chosen from the COMMONS, to supply the vacancies."

Vide supra, p. 34. the note.

[It has been already observed, that the Doctor is mistaken, as to LIVY's Testimony, who does not say *chosen from the COMMONS*, but that the Principal men of the Equestrian Rank were chosen (*primoribus equestris gradus lectis* :)] And this is not a mistake of no moment, as we shall see hereafter : For, by the COMMONS, the Doctor must here mean the Plebeians, the People, as distinguished from the Patricians, not the People as distinguished from the SENATE. Taking the word COMMONS in this latter sense, there could be no Lession of Senators, but out of the COMMONS †.]

The Doctor continues—

† Vide supra, p. 56, 57.

"BUT we cannot imagine, that an † act of so great moment could pass without the special Command and Suffrage of the PEOPLE, at a time, when nothing else of any moment passed without it : the Reason of the thing, and the Power of the PEOPLE, in all similar Cases, must persuade us of the contrary.

"The next FACT that relates to our Question, is, the Admission of APPIUS CLAUDIUS into the SENATE.—LIVY does not say by what Authority this was done ; but DIONYSIUS, that it was by an Order of the SENATE and PEOPLE : that is, by a previous Decree of the SENATE, approved and ratified by an Assembly of the COMMONS || : which was the legal and

§ Vide supra, p. 193.

"regular § way of transacting all the public business, from the very beginning of the Republic, and continued generally to be so, in all quiet and peaceable times, to the end of it.

"These are the only examples of filling up the SENATE, from the Expulsion of the KINGS to the Creation of the

† N. B. The Doctor, in p. 49 of his Treatise, speaks of this Lession, as made out of the best and most reputable Citizens of the Equestrian Rank : which Rank consisted of Patricians and Plebeians. And in the Preface to his Life of Cicero, speaking of the Expulsion of the KINGS, he says,—"The NOBLES or PATRICIANS, of whom the SENATE was composed, were the most immediate gainers by the change &c."

|| By the Commons here, it is presumed, that the Doctor means the whole Roman People, the Senators included.



" CENSORS : and though we are not directly informed, by what  
 " Authority they were effected, yet it is CERTAIN, that it was  
 " by the intervention and power of the PEOPLE: agreeably to  
 " *the express testimony of CICERO, and the Speech of CANULEIUS*  
 " the TRIBUN, referred to by your Lordship, wherein it is  
 " declared, that *from the Extinction of the Regal Government,*  
 " *the Admission* of all members into the SENATE was given by  
 " the Command of the PEOPLE \*.

" From these augmentations just mentioned, to the institution  
 " of the CENSORSHIP, there is an Interval of SIXTY YEARS, or  
 " more, without the mention of any Review or Supply of the  
 " SENATE whatsoever: and yet there must have been some  
 " constant method of supplying it during that time, or it would  
 " have been wholly extinct. The CONSULS, whose province it  
 " was to hold the CENSUS, and general LUSTRATION of the  
 " Citizens, as oft † as they found it necessary, had, in conse- † Vide supra,  
 " quence of that Duty, the task also of settling the Roll of the P. 157. the  
 " SENATE, at the same time. Yet there is no instance recorded note.  
 " of the exercise of that Power, or of any act relating to it, either  
 " by the admission or ejection of any Senators: so that *the state*  
 " *of the SENATE in this Period is left wholly dark to us, by the*  
 " *ancients*, nor has been explained, as far as I know, by any of  
 " the moderns.

" THE MOST PROBABLE ACCOUNT of this matter is this, That N. B.  
 " the SENATE began NOW [i. e. A. U. 244. 260. and 297] to Treat. p. 42.  
 " be regularly supplied by the ANNUAL MAGISTRATES, who  
 " were instituted † about this time, and chosen by the PEOPLE. † Vide supra,  
 " These were P. 114.

" TWO QUÆSTORS of Patrician families, and A. U. 244.

" FIVE TRIBUNS of the PEOPLE, [of Plebeian families] with A. U. 260.

" TWO ÆDILES, of Plebeian families; to which

" FIVE more TRIBUNS were afterwards added. A. U. 297.

\* The words of CICERO [pro Sext.] cited by the Doctor, are Deligerentur autem &c. Vide supra; p. 14. in the Note; and vide supra, p. 57.

The words of CANULEIUS the TRIBUN are—Aut ab Regibus lecti; aut post exactos reges, jussu Populi. Liv. lib. 4. cap. 4. Vide supra, p. 11.

We shall very soon have occasion to consider fully the force of both these passages.

" And

"And if we suppose all these to have had an Admission into the SENATE, by virtue of their office, and, consequently, a right to be enrolled by the CONSULS, at the next *Lustrum*, this would yield a competent supply to the ordinary vacancies of that Assembly: which might receive some accession also from the DECEMVIRI, who were not all PATRICIANS, nor yet SENATORS perhaps, before their election to that magistracy. If this was the case, as I take it to have been, it will help us to account for the Silence\* of Authors about it, as being a thing that succeeded of course, so as to have nothing in it remarkable, or what seemed to deserve a particular recital."

BEFORE I go farther into the Doctor's most probable Account &c. I shall take notice of some few Improbabilities, which there are in this Beginning of it.

Vide supra,  
p. 114.

1. It is not probable, that the QUÆSTORSHIP was instituted after the commencement of the Republic; though the QUÆSTORS were, probably, then chosen, for the first time, by the PEOPLE †; [and perhaps had then the name of QUÆSTORS given them, with some new powers, or branches of business.]

† Fast. Cap.

2. It is not probable, that FIVE Tribunes were created at the first institution of the Tribuneship. LIVY tells us, that, according to some Authors, and particularly PISO the Historian, the COMMONS did not begin to have FIVE Tribunes, before the year 283 †, when, by a new Law, those Plebeian Magistrates were chosen, for the first time, in *Comitia Tributa* ||: And PIGBIUS,

\* The Silence of Authors about it will be as well accounted for, by supposing, that the CONSULS, by virtue of their Prerogative, did constantly, and of course, fill the Vacancies of the SENATE with new members of their own nomination.

† It is thus that M. Crevier endeavours to reconcile Tacitus with Caninius the Tribune (in Livy) who says, Nullane res nova institui debet?—Tribuni plebis, ædiles, quæstores nulli erant: institutum est ut fierent. M. Crevier, in his Note on this Passage, compared with what Tacitus says, (vide supra, p. 114) writes thus: *Indè facile nasci potuit ea opinio, quam hic Livius sequitur: ita ut pro primis omnino quæstoribus habiti sint, qui primi tantum à populo electi fuerant.* But there does not seem to be any need of a Reconciliation; for all that Caninius says, is, *There was a time when Quæstors were not:* and he speaks of all institutions as new, that were made since the time of ROMULUS; and in naming the new institutions, he does not place them according to the times in which they were made.

|| Sunt qui duos tantum in sacro monte creatos Tribunos esse dicant &c. Lib. 2. cap. 35. Tam primum tributis comitiis creati tribuni sunt: numero etiam additos tres perinde ac duo antè fuerint, PISO auctor est. Lib. 2. cap. 58.

whose



whose principal business is, to find out the names of the Magistrates of every year, has, in no year before A. U. 283, inserted more than Two Tribunes in his *Fasti Capitolini*.

And here it may be proper to mention, that the faithful and exact Dionysius, the diligence of whose Enquiries is celebrated \* by Dr. Middleton, does not take the least notice of any Variation in the Reports of the Historians, concerning the number of the Tribunes created, at the first establishment of that Office; but confidently affirms, that the number was FIVE. And yet, on another occasion, he follows Piso preferably to all the other Historians.

\* Vide supra, P. 44. 45.

3. It is, in no degree, probable, that any of the DECENVIRI were either from the COMMONS, or from the PLEBEIANS, though we are told by Dionysius †, that three of them were taken from the Plebeian Body, *ex τῶν δημοτῶν*.

† p. 682.

THAT none of them were from the COMMONS, we may prove by the famous Speech of Canuleius the Tribune, who is good authority with Dr. Middleton, and who asserts that they were all from the PATRES:—*Potiusque Decemviris, deterrimis mortalium, qui tum OMNES ex PATRIBUS erant, quam optimis regum, novis hominibus similes Consules sumus habituri?* His very next words are these; *At enim nemo post Reges exactos DE PLEBE Consul fuit. De Plebe* is put in opposition to *ex Patribus*; and his meaning must be, that, since the Expulsion of the Kings, no man of the COMMONS, i. e. no man, who was not a member of the SENATE, had been raised to the Consulship: I say, he must mean this, and not, that no man of Plebeian Race had been chosen Consul: for, did he mean the latter, his Assertion would contradict what LIVY tells us of Menenius Agrippa, CONSUL in the 7th year of the Republic, that he was of PLEBEIAN race †. *Placuit Oratorem ad Plebem mitti Menenium Agrippam, facundum virum, et quod inde oriundus erat, Plebi carum.* And, according to Dionysius, ALL the new Senators, created just after the Expulsion of the Kings, were of Plebeian families.

Liv. l. 2. c. 32.

THAT none of the DECENVIRI were of the PLEBEIAN BODY, we may well conclude from that Law, which they made, pro-

† It is commonly believed, that he was one of those Knights who were brought into the SENATE, at the *Lection* made by BRUTUS, *jussu populi*.

hibiting

hibiting Intermarriages of PATRICIANS with PLEBEIANS. The DECEMVIRI are said to have lived in perfect Concord; and indeed this Concord was absolutely necessary to the Continuance of their usurped Domination: Is it probable, that *Seven* of the number would have thought of putting so gross an affront upon the other *Three*?

But now to proceed in the Doctor's MOST PROBABLE ACCOUNT: We have got no farther yet than *this*, *That about the time, when the annual Magistrates [namely, the Quæstors, Tribuns, and Plebeian Ædiles] were instituted, that is, about the years 244, 260, 297, the SENATE began to be regularly supplied by those Magistrates.*

The Doctor tells us, in the first page of his *Treatise*, that LORD HERVEY had asked his Opinion on "*the manner of creating Senators, and filling up the Vacancies of the SENATE in old Rome, on which M. Vertot's answer to the same question, when it was proposed to him by the late EARL STANHOPE, had not given him Satisfaction. In compliance with his Lordship's request (says the Doctor) I, in a Letter, endeavored to explaine the State of the ROMAN SENATE, from that time in which the COMMONS of Rome first opened their way to the PUBLIC Honors of the City, till the final oppression of their liberty, which I observed to be the PERIOD, to which EARL STANHOPE's question was particularly referred.*"

Vide supra,  
p. 2.

Whatever may be supposed the *End* of the PERIOD, to which EARL STANHOPE's *Question was referred*, it is unquestionably manifest, that the *beginning* of it was THE BEGINNING of the COMMONWEALTH: so that the time in which the annual Magistrates were instituted, and the time in which the COMMONS of ROME first opened their way to the PUBLIC Honors of the City, are, seemingly, with the Doctor, *one, and the same time*: and yet, with the Doctor, they are, seemingly, different. For the Doctor sent his thoughts to LORD HERVEY in a Letter; and, in this Letter (which the Doctor gives us entire) he writes thus:

Treat. p. 5,6.

"From the time that the PLEBEIANS had opened themselves  
"a way to the FIRST Honors of the State, the constant and  
"regular supply of the SENATE was from the annual Magistrates;  
"who, by virtue of their several offices, acquired an immediate  
"right



"right to sit and vote in that Assembly. THE USUAL GRADATION of these offices, was that of *Quæstor*, *Tribun of the People*, *Ædile*, *Prætor*, and *Consul*; which every Candidate, in the ordinary forms of the Constitution, was obliged to take in their order, with this exception only, that he might forego either the *Tribunate* or the *Ædileship*, at his own choice, without a necessity of passing through them both."

By what is here said, might not a Reader be naturally led to think, that the TIME in which the SENATE began to be supplied from the annual Magistrates, was, not the Beginning of the Republic, not the year 244, nor 260, nor 297, but the year 387\*, when \* Fast. Cap. the Plebeians obtained Admission to the CONSULSHIP, the FIRST Honor of the State; or rather the year 417†, when they obtained † Fast. Cap. the PRÆTORSHIP, the Doctor mentioning the office of PRÆTOR, as one of those Honors, the way to which was laid open to the PLEBEIANS? But it ought to be noted, that the Doctor does not say, that the Time from which the Plebeians had opened themselves a way to the FIRST honors &c. was the Time, when the Senate BEGAN to be supplied from the annual Magistrates; but only, that "from that time the constant and regular supply of the Senate was from the annual Magistrates;" and that, from that time the Doctor, in his Letter, of the 1st of April 1735, to LORD HERVEY, chose to begin his Account of the SENATE. This appears from his connected Letter, subsequent to the former.

"In my former Letter I chose to BEGIN my Account of the Treat. p. 15. SENATE, from THAT TIME WHEN ITS POWER AND GLORY WERE AT THEIR HEIGHT, and its History the most worthy of our notice, when it was free in its deliberations, and open in its access to the Virtue of every Citizen &c."—Now that, by all these marks, the Doctor intends to denote the year 387, or rather 417, we may gather, not only from his referring us to his former Letter, where the one or the other of those Æras is plainly indicated, but from what he says in the Preface to his Life of Cicero. [The Tribuns] "from their first number Five, being in- p. xxxvi. creased afterwards to Ten, never left teizing the SENATE with fresh demands, till they had laid open to the Plebeian families, a promiscuous Right to ALL the Magistracies of the Republic, and, by that means, a free admission into the SENATE.

E e

" Thus

" Thus far they were certainly in the right, and acted like  
 " true Patriots; and after many sharp contests had now brought  
 " the Government of Rome to its perfect state; when its Honors  
 " were no longer confined to particular families, but proposed  
 " equally and indifferently to every Citizen; who by his Virtue  
 " and Services, either in War or Peace, could recommend him-  
 " self to the notice and favor of his Countrymen" &c.

It would seem then, that *the time*, in which the Commons of Rome first opened their way to the PUBLIC honors of the City, and *the time*, in which the PLEBEIANS opened themselves a way to the FIRST honors of the State, and *the time*, in which the Power and Glory of the SENATE were at their height, are all one and the same Time: and that *from this time*, not only the constant and regular supply of the Senate was from the annual Magistrates, (for so it had been, ever since the annual Magistrates were instituted) but — what? Indeed I do not know.

Vide supra  
 p. 205.

Neither can I guess what the Doctor means by saying, as above, that the SENATE (teized into it by the Tribuns) " laid open to  
 " the Plebeian families, a promiscuous Right to ALL the Magi-  
 " stracies of the Republic, and, BY THAT MEANS, a free admission  
 " into the SENATE." For, by his own account, as we shall see presently, the Plebeians, BEFORE that promiscuous right &c. was laid open to them, had a much FREER admission into the SENATE, than the Patricians themselves.

SOME Readers, who have observed the admirable perspicuity of thought and expression, with which Dr. Middleton commonly writes, may perhaps be curious to know, what it was that caused his seeming perplexity, in speaking of this matter; and, particularly, why he appears so much at a loss in choosing an *Æra*, from whence to begin his Account of the Roman Senate.

To say, with certainty, what was the Cause of this, would be very difficult; but a reasonable conjecture at the Cause may perhaps be made.

Published in  
 1741.

\* Vide supra,  
 p. 7.

† Published in  
 1747.

Before the Doctor's *Life of Cicero* appeared; it was given out, that we should find there a satisfactory answer to Earl Stanhope's Question; and, accordingly, the Doctor, in that History, imparted a considerable quantity of the PRECISE \* ILLUSTRATION which he, afterwards, in his *Treatise* †, complicated; and which, when compleat,



complete; was (to use an Expression of the famous Bentley) *Nonsense fourteen stories high.* But this *Illustration* the Doctor calls his *Hypothesis*, and, if we may believe a writer, eminent in the Learned world, a Divine, and the Doctor's particular friend, the Doctor could not easily give up an *Hypothesis*, which he himself had begot. "To speak freely (*says this friend*) my Reasoning (which was an argument *ad hominem*, and, as such, I thought would have been revered) reduced the learned writer to this Dilemma; either to allow the Fact, and give up his *Hypothesis*; or to deny the Fact, and change his Question. And he has chosen the latter, as the lesser Evil. For a simple Question is but like a wife to wrangle with; and when we lose one we easily find another. But the *Hypothesis* begot upon it, is of the nature of one's offspring, whose loss perhaps is irreparable."

Vide supra, P. 7.

Warburton's Remarks &c. p. 10. published 1744.

Now to so much of the Doctor's *Hypothesis* (concerning *Admission into the Roman Senate*) as was given us in his *Life of Cicero*, some Objections were published in 1745.

The Notions, objected to, the Reader may find in Vol. I. p. 57. of that celebrated work.

The Doctor, after speaking of CICERO's being chosen to the *Quæstorship*, thus continues:

"This was the first step in the legal ascent and gradation of public honors, which gave an immediate right to the SENATE, and, after the expiration of the Office, an actual admission into it DURING LIFE: and though strictly speaking none were held to be complete Senators, till they were enrolled at the next Lustrum in the list of the Censors, yet that was only a matter of form, and what could not be denied to them, unless for the charge and notoriety of some crime, for which every other Senator was equally liable to be degraded. These QUÆSTORS therefore, chosen annually by the PEOPLE, were the regular and ordinary supply of the vacancies of the SENATE, which, consisted, at this time, of about five hundred: by which excellent Institution, the way to the highest order of the State was laid

\* The Question in dispute between the two learned Friends seems to have been, Whether the present Popish Pagans derived their Paganism from their Pagan, or from their Christian Ancestors?

"open to the virtue and industry of every private Citizen; and the  
 "dignity of this Sovereign Council, maintained by a succession of  
 "members, whose distinguished merit had first recommended  
 "them to the notice and favor of their Country."

HP's Roman  
 Hist. Vol. II.  
 p. 543. 1st  
 edit.

A. U. 623.

The Objections made to this account, were in the following terms.

"THE learned writer, in support of what is here said, gives  
 "in the margin the following passages from Cicero: *Quæstura*  
 "primus gradus honoris [in Verr. Act. 1. 4] *Populum Romanum*  
 "cujus honoribus, in amplissimo Concilio, et in altissimo gradu  
 "dignitatis, atque in hac omnium terrarum arce collocati sumus:  
 "[Post red. ad Sen. 1.] *Ita magistratus annuos creaverunt, ut con-*  
 "*cilium Senatus reip. proponerent sempiternum; deligerentur autem*  
 "*in id concilium ab universo populo, aditusque in illum summum*  
 "*ordinem omnium civium industria ac virtuti pateret. Pro*  
 "*Sext. 65.*

"That from SYLLA's Dictatorship to the time of CICERO's  
 "Quæstors (a short period of six or seven years) the Quæstors  
 "were the regular and ordinary supply of the Vacancies of the  
 "SENATE (though perhaps it cannot be proved) may well enough  
 "be imagined; because the Quæstors, chosen annually, were then  
 "TWENTY in number. But it plainly appears from the words  
 "immediately preceding those which are quoted from Cic. *pro*  
 "*Sext.*, that the Passage refers to the times before SYLLA. *Majores*  
 "*nostri, cum Regum potestatem non tulissent, ita Magistratus annuos*  
 "*creaverunt &c.* Now the number of Quæstors, annually chosen,  
 "was, to the year of Rome 333, only Two; from that time to  
 "488, but FOUR; and thence to SYLLA's Dictatorship \* did  
 "not exceed EIGHT, which last and largest number, if sufficient  
 "to supply the Vacancies of a SENATE consisting of 300 mem-  
 "bers (many of whom serving in the wars, some must be sup-  
 "posed to perish in battle) yet certainly could not be sufficient  
 "to furnish annually Ten new Tribunes, and Four new Ædiles.  
 "Of these fourteen Magistrates, who are all supposed by the  
 "learned Historian to have places in the SENATE, Six must every  
 "year, taking one year with another, obtain their Magistracies,  
 "and rise to the SENATE, without passing through the office of  
 "Quæstor."

\* Y. of R.  
 671.



The Author of these Objections would be guilty of an intolerable degree of vanity, if he should imagine, that *Dr. Middleton*, who, though conversant in the Predictions of the ancient Prophets, never looked into the Bishop of London's celebrated Discourse of the Use and Intent of Prophecy, till I know not how many years after its publication; and who, though conversant in the Affairs and Constitution of ancient Rome, never read *M. Vertot's* Answer, dated 1719, to *Earl Stanhope*, till the year 1735—I Vide supra, say it would be intolerable vanity, in the Author of the Objections P. 5. (above transcribed) to imagine, that the Doctor had ever condescended to cast an eye upon them; if certain Passages in his *Treatise*, which was published two years after the *Objections*, did not give some ground to suspect, that to obviate these was one small part of his design in that work.

1. It was objected (as we have seen) that the Doctor, in citing the Authorities of *Cic. pro Sext.*, had omitted the material words *qui* \* [majores nostri] *cum Regum potestatem non tulissent*. The Doctor, citing, in his *Treatise*, the same Authority, has added those words. \* Vide supra, p. 14. the note. Treat. p. 7.

2. And as those words unavoidably obliged him to find some way of filling the Vacancies of the Senate, from the very beginning of the Commonwealth, when there were but two *Quæstors*, he has recourse (as we have seen) for a supply, not to those "two" "QUÆSTORS only, of *Patrician* families, but to five TRIBUNS, "with two *ÆDILES*, all of *Plebeian* families, to which five more "TRIBUNS were afterwards added. If we suppose (says the Doctor) all these to have had an admission into the SENATE, by virtue of their office, and consequently, a right to be enrolled by the CONSULS at the next Lustrum, this would yield a competent supply to the ordinary vacancies of that Assembly: which might receive some accession from the DECENVIRI &c."

Treat. p. 42. and vide supr. p. 205.

This is the Doctor's account how the SENATE was supplied during Sixty years, from the Commencement of the Republic; it was not, it could not be, by the *Quæstors* alone.

3. But, whereas it was hinted, in the *Objections*, that EIGHT *Quæstors* might not be sufficient to supply the yearly vacancies of a SENATE consisting of 300 members, many of whom must be supposed

supposed to be cut off in battle, the Romans being almost continually in war; and the Doctor having, by the account above, provided but NINE annual Magistrates (viz. 2 Quæstors, 5 Tribuns, 2 Ædiles) to fill those Vacancies, till the year 297, when five more Tribuns were added, the Doctor, in his Treatise, has said something that looks like an answer to this objection.

Treat. p. 48.

"But it may perhaps be objected, that though the annual Magistrates might furnish a tolerable supply to the ordinary Vacancies of the SENATE, yet there must have been some other method of providing for the extraordinary Deficiencies made by the calamitous accidents of wars abroad, or sickness at home. In answer to which, it must be owned, that the SENATE, in such particular Exigencies, would demand a larger supply, than the public offices could furnish: and the method of supplying it seems to have been regulated by what the first Consuls did, upon the first enrollment, and completion of the SENATE: for this was probably the standing precedent; agreeably to which, all the future CONSULS, as we may reasonably presume, used to pitch upon a number of the best and most reputable Citizens of the Equestrian Rank, to be proposed to the choice, and approbation of the People in their general Assembly, who, by approving and confirming the list, gave them a complete and immediate right to the rank and title of Senator during life."

After all, it cannot be concluded from the matter of these passages, that the Doctor intended, by them, to answer the Objections above mentioned, or, indeed, that those Objections were ever seen or heard of by the Doctor. For the principal of the Objections is, that TEN Tribunes and FOUR Ædiles, annually chosen, could not be made out of EIGHT Quæstors annually chosen: and to this the Doctor, in his Treatise, gives no Answer, but confidently repeats the Absurdity as a certain Fact.

This Absurdity is a necessary consequence of his Doctrine of Gradation, and of the \* Obligation, which, he says, every Citizen was under of passing through the Quæstorship, the first degree of Honor, in his way to the Tribunate or Ædileship (both which were reckoned second degrees, and the Candidate at liberty to chuse which of the two he would stand for, after he had been Quæstor.)

\* Treat. p. 5, 6.



*Quæstor*.) We have already seen one \* passage of the Doctor's \* *Vide supra*  
Treatise, where he speaks of this *Regular Gradation* and this *Obligation* &c. and we have them again in p. 54. *p. 209.*

—“ In truth, the People's right of chusing *Magistrates*, was *Treat. p. 54.*  
“ the same with that of chusing *Senators*; since the *Magistrates*,  
“ BY VIRTUE OF THEIR OFFICE, obtained a place of course in the  
“ SENATE: that is, the *Quæstors*, *Tribuns of the People*, *Ædiles*,  
“ *Prætors*, *Consuls*; for this was the *REGULAR GRADATION*, or  
“ STEPS OF HONOR, WHICH EVERY MAN, in the course of his  
“ ambition, WAS TO ASCEND IN THEIR ORDER.”

Surely the reader must be astonished to find, that three such mountainous mistakes, as are in these few lines, could escape the discernment of so perspicacious a Critic as Dr. Conyers Middleton.

1. The *Gradation*, spoken of, was so far from being regularly observed, in the course of every man's ambition, or, as the Doctor elsewhere expresses it, in the ordinary forms of the Constitution †, † *Vide supra*,  
that it was directly contrary to the constitutional Laws and Customs, *p. 209.*  
and could not be observed in any instance, during the first century, after the establishment of the Commonwealth. For the *Tribuneship* was always confined, by Law, to the *Plebeians*; and the People, by Custom, were barred from chusing *Plebeians* to the *Quæstorship*, till the year 333 (when the number of *Quæstors* was augmented from two to four) nor did they, in fact, chuse any *Plebeian* to that office, till 344.

And, after this year, some of the *Quæstors* (perhaps the greater number) being still chosen out of the *Patrician* body, it is plain that these were incapable of ascending by the *Tribuneship* to the higher offices; and the higher office of *Prætor* was not instituted till the year 387, nor accessible to the *Tribunes* before 417.

2. That the *Consuls*, *Prætors*, *Ædiles*, *Tribunes of the People*, *Quæstors*, BY VIRTUE OF THEIR OFFICE, obtained a place of course in the SENATE, is contradicted by the Doctor himself, in the very sentence where he asserts it: For it is inconsistent with his *Regular Gradation*. If the *Quæstors*, by virtue of their office, obtained a seat (for life †) in the SENATE, and no man could ascend to † *Vide supra*,  
the *Tribunate* or *Ædileship*, but by the *Quæstorship*, it will follow, *p. 211.*  
that none but the *Quæstors* could obtain seats in the SENATE, by  
virtue

virtue of their office : the other Magistrates must have been Senators before they obtained their respective Magistracies.

3. The third mountain of error (in the last passage cited from the Doctor's Treatise) is the absurdity, before mentioned, of making 8 to be equal in number to 14.

This Absurdity, I said, would be a consequence of the *Gradation* contended for. But the Doctor, in this matter, leaves us under no necessity of looking to consequences ; for he roundly asserts, Treat. p. 45. that in the year of Rome 623, to which time (and afterwards, till Sylla's Dictatorship, A. U. 671.) no more than EIGHT *Quæstors* were annually chosen, a LAW was passed, *That the Tribunes should always be chosen out of those who had already born the office of Quæstor*, i. e. that *Eight Quæstors* should annually be made into *Ten Tribunes*.

It may be proper to present the Reader with the whole passage, as it is a very curious one, and furnishes a good deal of matter for discussion.

Treat. p. 43. " THE office of *Quæstor*, which was instituted the first, is  
" always mentioned by the ancients, as *the first Step of Honor* in  
" the Republic, and *what gave an Entrance into the Senate* \*. As  
" to the *Tribuns*, it has been taken for granted, on the Authority  
" of *Valerius Maximus*, that, on their first creation, they were  
" not admitted into the SENATE, but had seats placed for them  
" before the door, in the Vestibule †. But we may reasonably  
" conclude, that a Magistrate so ambitious and powerful, who  
" could controul, by his single negative, whatever passed within  
" doors, would not long be content to sit without. *A. Gellius*  
" says, that they were not made Senators before the law of  
" *Atinius* ‡; who is supposed to be *C. Atinius Labeo*, Tribun  
" of the People, A. U. 623 : but *that cannot possibly be true*,  
" since it is evident from the Authority of *DIONYSIUS* ||, that near  
" four

\* *Quæstura primus gradus honoris.* Cic. in Ver. Act. 1. 4.

† Illud quoque memoria repetendum est, quod Tribuni Plebis intrare curiam non licebat. Ante valvas autem positus subselliis, decreta patrum attentissima cura examinabant. Val. Max. lib. 2. cap. 2. 7.

‡ Nam et Tribuni Plebis senatus habendi jus erat quanquam Senatores non essent, ante Atinium Plebiscitum. A. Gell. 14. 8.

|| The Doctor cites from *Dionysius* (Lib. 7.) two passages, ταῦτα δὲ ὁρῶντες &c. and καὶ τὸ ἐπὶ τῷ &c. both which have been taken notice of, vid. p. 36, 37. and



"four centuries before, the TRIBUNS, by the mere weight and  
 "great power of their office, had gained an actual admission into  
 "the SENATE [in 262] within two years after their first creation,  
 "in which we find them [in the year 308] debating and enforcing  
 "with great warmth the demands of the COMMONS, for a LIBERTY  
 "OF INTERMARRIAGES WITH THE NOBLES, and THE CHOICE  
 "OF A PLEBEIAN CONSUL: so that the intent of this ATINIAN  
 "law, could not be, as it is commonly understood, that the  
 "TRIBUNS should be SENATORS in virtue of their office, FOR  
 "THAT THEY HAD BEEN FROM THE BEGINNING, but that for  
 "the future [O dear Hypothesis!] they should always be chosen  
 "out of the Body of the SENATE; or, which is the same thing,  
 "out of those who had already born the office of QUÆSTOR."

One would naturally think that the very CONTEST, here mentioned, between the SENATE and the TRIBUNES, and the great warmth, with which the latter, as the Doctor says, enforced the demands of the COMMONS [the Plebeians] for a liberty of INTERMARRIAGES with the NOBLES, and the choice of a PLEBEIAN CONSUL, might, alone, have been sufficient to convince the two learned Doctors, that their HYPOTHESIS is wholly groundless; that the TRIBUNES were not SENATORS from the beginning, nor Senators in A. U. 308, the time of that CONTEST: And from the violent Struggle (which grew almost to a Civil War) in the year 386, about the Law, for chusing, at every election of Consuls, one out of the Plebeian body, the Doctors might surely have gathered, that the Tribunes had not yet obtained the Right of being Senators in virtue of their office.

and he brings a third from Lib. x. 11. (p. 628) Ἐπειδὴ συναχθέντες εἰς τὸ βουλευτήριον οἱ συνέδρῳι, παρόντων καὶ τῶν δημαρχῶν. Deinde vero Patres in curiam coacti, Tribunis quoque presentibus. Dionysius is here speaking of an extraordinary terror, which, on account of some prodigies, had universally seized the Multitude, in the year of Rome 292. The Senators assembled on this occasion to consider of the best measures for the public safety and prosperity, ὑπερ ἀσφαλείας τε καὶ σωτηρίας τῆς πόλεως εὐκοπῶν: And, at this consultation, the TRIBUNES, the Historian tells us, were present. Now his mentioning this circumstance, far from proving that the Tribunes were Senators at this time, seems rather to prove the contrary. But certainly it does not prove, that the Tribunes had gained an actual admission into the SENATE in A. U. 262, which is the point, in proof of which the Doctor produces it.

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Had the Vacancies of the Senate been regularly supplied, by the admission of the *Tribunes* and *Plebeian Aediles*, from the time those Magistrates were instituted (as Dr. Middleton holds) or within less than two years after their first creation (as Dr. Chapman thinks\*) there must have been, at the time of the Contest about *Intermarriages*, a very great Majority of *Plebeians* in the Senate; and in the year 386, the *Plebeians* in that Assembly must have so much outnumbered the *Patricians*, as to be six to one.

\* Vide supra,  
p. 36.

For, of the *Fourteen* annual Magistrates, who are supposed, by the two Doctors, to supply the Vacancies of the SENATE, and who, Dr. Middleton thinks, would yield a competent † supply to the ordinary Vacancies of that Assembly, TWELVE were *Plebeians*, and only Two were *Patricians*, namely, the two *Quaestors*.

† Vide supra,  
p. 206.

The Notion, therefore, of the People's indirectly chusing the *Senators*, by their election of the annual Magistrates, cannot possibly be true; it being evident to demonstration, that those annual Magistrates, Twelve of them at least, did not, IN VIRTUE OF THEIR OFFICE, obtain Seats in the SENATE.

And as to the extraordinary deficiencies, made by the calamitous accidents of wars abroad, or sickness at home, it is incredible ‡, that those deficiencies were, in all times, supplied (as Dr. Middleton would have us believe) by *Citizens*, whom the PEOPLE chose in their General Assembly. Dr. Chapman says ||, that from the time of *Coriolanus*, A. U. 262, "the members of the Senate seem to have been chosen indiscriminately out of the two Orders; the office of *Tribune*, was not even insisted on as a previous qualification; and we meet with *Plebeians*, who were grown grey § in the SENATE,

‡ Vide supra,  
p. 51, 52.

|| Vide supra,  
p. 37.

§ Of these grey *Plebeians*, Dr. Chapman mentions but one, *P. Licinius Calvus*, said, by *LIVY*, to have been an old Senator and a very old man in the year 353. I observe, that the Doctor has not chosen to give us *Sp. Maelius* for another instance of a *Plebeian* senator, though Dr. Middleton thinks it plain, that he was a member of the Senate, when, in 313, he brought destruction upon himself, by affecting popularity. The Doctor's reasons for so thinking, the Reader may find above, in p. 38. Perhaps there are stronger reasons to believe, that he was not a Senator:

Vide supra,  
p. 38 & 42.

1. For, had he been of that highest rank, it is probable that *LIVY*, in his first mention of him, would have said so, and not have styled him *ex equestri ordine*.

2. His aspiring to be a *Tribune* of the Commons, which ambition is intimated in these words of the Dictator's speech, *cui tribunatus plebis magis optandus quam sperandus*,



"before they had served the Public in any other capacity." All this may be true, and yet be of no service to Doctor Middleton's Hypothesis. On the contrary, *that the members of the Senate were indiscriminately chosen out of the two Orders*, ought, with him, to be a proof \*, *that the PEOPLE did not chuse them*: that, \* Vide supra, after those furious contests began, between the two Orders, about P. 8. Dignities and Privileges, the PEOPLE, FREE to chuse PLEBEIANS into the SENATE, would certainly have filled it with men from that body.

Dr. Chapman tells us (as we have seen) in the Preface to his Essay, that "he read Dr. Middleton's Treatise, when it came from the Press, not only with that degree of pleasure, which the writings of so fine a Pen are apt to inspire, but with a satisfaction of a more particular nature; which arose from finding HIS OWN CONCLUSION, with regard to the manner of admission into the SENATE, conformable to that of a person so generally esteemed a perfect master of every part of the Roman Constitution. The PREMISES, however, from which it was drawn, he saw a good deal different."

*sperandus*, is a proof that he was not a Senator: because, by the Treaty of reunion between the SENATE and the Seceders in 262, it had been covenanted, that no Senator should be chosen a TRIBUNE, *agi deinde de concordia coeptum, concessumque in condiciones, ut Plebi sui magistratus essent sacrosancti, quibus auxilii latio adversus consules esset: NEVE CUI PATRUM CAPERE EUM MAGISTRATUM LICERET.*

And as to the Doctor's Reasons, they seem to have been hastily offered. *Mælius's* aspiring to the Consulship does by no means evince, that he was a Senator; for all the chief men of the Commons had the same ambition, and had, but five years before, been struggling hard to obtain their desire. And the Doctor mistakes, when he represents the Dictator as saying, that the City, on account of *Mælius's* Birth, could hardly digest him as a Senator. The Dictator expresses his indignation, "that, when the CLAUDII and the CASSII, great names, great men, Consuls, Decemvirs, illustrious by the dignities they had held, and by those of their ancestors, had in vain attempted to make themselves KINGS of Rome, *Mælius*, a man of no dignity by birth, or by magistracies, should have the folly to think of seating himself in the Throne of Romulus, the Son of a God; that a corn-merchant, who could not reasonably hope to be chosen a Tribune of the Commons, and whom the City could hardly have digested as a SENATOR, should hope to be endured as a KING."

N. B. Had *Mælius* been chosen to be a Military Tribune in A. U. 308, (and, probably, it had been expected that he would be chosen) he must by that magistracy have had a seat in the Senate. And this, I apprehend, is what the Dictator refers to. Vide supra, p. 64. *Mælius* was as well born as the Tribunes, whom the Doctor supposes the City to have easily digested as Senators.

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AS, by the warm and frequent CONTESTS abovementioned, between the SENATE and the PLEBEIANS, the Reader must, I think, be convinced, beyond a doubt, that the majority of the *Senators* were not *Plebeians*, and, consequently, that the CONCLUSION in question is false; that the PEOPLE did not, by chusing the annual magistrates, *indirectly* chuse the *Senators*, during the times of those CONTESTS, nor while any Contests were in the State concerning Privileges and Dignities, claimed by the *Patricians*, as *Patricians*; it seems wholly needless to examine the PREMISES, made use of by either of the Doctors. Nevertheless, as it may gratify an innocent curiosity, to see how two learned men attempt to prove what, being evidently false, is impossible to be proved, I shall mention the principal arguments by which they have arrived at their CONCLUSION.

Treat. p. 53.  
Vide supra,  
p. 13, 14.

Dr. Middleton has a sort of triumph in that very liberal, not to say inconsiderate and prodigal *concession*, made by M. Vertôt (in his answer to Earl Stanhope's Question)—*That the sole right of creating Senators is attributed to the PEOPLE, by two, the most celebrated writers of the Republic, CICERO and LIVY.*

Well, what says CICERO? His words the reader may find by turning back to p. 14; and I have there given a translation of them, according to the reading, followed by M. Vertôt and the two Doctors—*deligerentur autem in id concilium AB universo populo, aditusque in illum summum ordinem omnium Civium industria ac virtuti pateret.*

Essay, p. 74.

Dr. Chapman, having cited these words, takes notice, that  
 “ *Hotoman* (who in this is followed by *Grævius*) is for reading  
 “ *deligerentur autem EX universo populo.*” The Doctor adds—  
 “ and the reason he gives for it is, that he does not remember  
 “ to have found in the course of his reading, that the Senate was  
 “ ever chose in any such manner. But if he had recollected  
 “ the accounts given by *Dionysius* \*, of the elections of Senators in  
 “ the two first instances, or what *Appian* says, of the manner  
 “ in which the vacant seats were filled by SYLLA; or even  
 “ the following words of CICERO himself (Orat. in Verrem.  
 “ lib. 4. cap. 40.) *Rex denique ecquis est, qui senatorem populi*  
 “ *Romani testis ac domo non invitet? Qui honos non homini solum*  
 “ *babetur, sed primum populo Romano, cujus beneficio nos in hunc*  
 “ *ordinem*

\* Vide supra,  
p. 116. 141.  
142.



"*ordinem venimus*; I presume he would have acquiesced in the former reading, which both *Manutius*, and *Zamoscius* have done, as also the ingenious Author of the *Life of CICERO*."

Certain it is, that this ingenious author, Dr. Middleton, does acquiesce in the former reading, and does say, that the testimony of CICERO, in this passage, is decisive\*, and that this express\* <sup>Treat. p. 52.</sup> testimony of CICERO is confirmed † by LIVY, in "the Speech of † <sup>p. 40. 41.</sup>

"*Canuleius* the *Tribun*, wherein it is declared, that from the <sup>53.</sup> extinction of the Regal Government, the admission of ALL members into the SENATE was given by the COMMAND OF THE PEOPLE: *Aut ab Regibus lecti, aut post exactos Reges, jussu Populi.* Liv. 4. 4."

And, in p. 7. of his Treatise, he writes thus:

"All these Magistrates [*Quæstor*, *Tribune of the People*, *Ædile*, *Prætor*, and *Consul*] were elected by the PEOPLE in their public Assemblies, promiscuously and indifferently from the whole Body of the Citizens: WHICH EXPLAINS what CICERO frequently declares in different parts of his works: That the Senatorian Dignity was conferred by the suffrages and judgement of THE WHOLE ROMAN PEOPLE, and that an access to the Supreme Council of the Republic was laid open to the Virtue and Industry of every private Citizen."

And here the Doctor gives us in his margin, *Qui* [maiores nostri] *cum Regum potestatem non tulissent, ita magistratus annuos creaverunt, ut concilium Senatus resp. proponerent sempiternum: deligerentur autem in id concilium AB universo populo, aditusque in illum summum ordinem omnium civium industria ac virtuti pateret.* Cic. pro Sext. 65.

Now is it not very extraordinary, that so fine a Wit, and so egregious a Reasoner, as Dr. Middleton, should make use of his indirect election of Senators by the People, and his regular gradation of offices, to EXPLAIN what Cicero says, concerning the manner of forming the SENATE, before those Offices were instituted? CICERO speaks of what was done immediately after the extinction of the Regal Government. *Cum Regum potestatem non tulissent* &c. And, by the annual Magistrates, he means only the CONSULS, there being then no other annual Magistrates, whom he could mean. The main drift of his Discourse is to magnify and extol the

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the Dignity of the SENATE. " When our ancestors, to fill the  
 " place of a KING, chose two CONSULS, these were only  
 " ANNUAL Magistrates; the *Great Council*, the SENATE, was  
 " constituted PERPETUAL President of the Republic. But the  
 " choice of the members of this great Council was not *then* (i. e.  
 " at the lection of Senators made by *Brutus*) confined to the  
 " *Patrician* Body (as it was afterwards during many years) but  
 " the way into it was open to the Virtue, and Industry of every  
 " Citizen; the Members of the Senate were *then* chosen out of  
 " the whole Body of the People: *Ex universo Populo* \*.

My Reason for chusing to follow this reading of *Hotoman* and *Grævius* is this:

That, according to the other reading, it is asserted by *CICERO*, that, after the Regifuge, the Senators were chosen OUT OF the whole People †, and BY the whole People.

Now, that they were in such manner chosen, is not intimated by any Historian. *LIVY*, by reporting, that the members of the NEW ‡ SENATE, which was formed immediately after the Regifuge, were taken from the *Equestrian Rank*, may well enough be understood to report, that they were chosen OUT OF the whole People; because that *Rank* was composed of *Patricians* and *Plebeians* promiscuously and indiscriminately: But then he attributes the choice of the persons to the CONSUL. And *DIONYSIUS*, who gives the Election of the new Senators to the PEOPLE, represents the Assembly as confining their Choice to the *Plebeian Body*, not as electing them OUT OF the whole People §.

And, as to Dr. Middleton's EXPLANATION of *Cicero's* words, by means of a supposed indirect Election of Senators by the PEOPLE, there could be no such indirect Election at the time of the Regifuge, nor till sixteen years after §, when the *Tribunes*

\* *Cicero*, as not being of a *Patrician* family, was personally interested in this point of History.

† This is implied in the words—*aditusque in illum summum ordinem omnium civium industria ac virtuti pateret.*

‡ *Dionysius* indeed tells us (as has been before observed, p. 34) that those *Plebeians*, who were at this time admitted into the Senate, were first made *Patricians*. Should we suppose this part of his Story to be true, still the *New Senators* were not, according to him, chosen *ex universo Populo*, but out of the *Patricians* only.

and



and *Ædiles* were instituted. And it happens, unfortunately for the Doctor's EXPLANATION, that those *annual Magistrates* were never elected, no, not at any time, either By the whole People, or OUT OF the whole People: Which is a demonstration, that CICERO, by his *Deligerentur autem &c.* could not refer to indirect Elections of Senators, to Supplies which the Senate received from the annual Magistrates: Nor indeed can he be supposed to refer to any direct Election of Senators, but that One, which was in the first year of the Republic, when the Choice, whether made by the Consul or by the People, was not confined either to the Patricians or to the Plebeians.

From the year 260, when the *Tribunes* and *Ædiles* were instituted, to the year 282, these Magistrates were constantly elected by an Assembly of the *Curia*; which did not comprehend the whole People, but those Free-men only who actually dwelt in the City. And, after the year 282, the *Tribunes* and *Ædiles* were elected in *Comitia Tributa*, from which Assemblies (when held for the Election of those Magistrates) the Senators \* most certainly, and, in the opinion of many learned Writers, ALL the Patricians were excluded.

And, that those Magistrates were elected OUT OF the Plebeians only, admits not of any doubt.

So that nothing could possibly be worse chosen, or more ineffectual for EXPLAINING Cicero's *Deligerentur autem &c.* than the Doctor's Hypothesis.

But (says the Doctor) this EXPRESS TESTIMONY of CICERO is CONFIRMED by LIVY, in "the Speech of Canuleius the Tribune, wherein it is declared, that from the extinction of the Regal Government the admission of ALL members into the Senate was given by THE COMMAND OF THE PEOPLE: [aut ab Regibus lecti, aut post Reges exactos jussu Populi.]"

The Speech of *Canuleius* is on occasion of the dispute (in A. U. 308.) about Repealing the Law, that prohibited Intermarriages of Patricians with Plebeians. The Tribune says to the PATRICIANS,

\* Annum—insignem maximè *Comitia tributa* efficiunt: res major victoria suscepti certaminis, quàm usu. Plus enim dignitatis comitiis ipsis detractum est, Patribus ex Concilio submovendis, quàm virium aut Plebi additum, aut ademptum Patribus. Liv. lib. 2. cap. 60.

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*Nobilitatem istam vestram, quam plerique oriundi ex Albanis et Sabinis, non genere nec sanguine, sed per cooptationem in PATRES habetis aut AB REGIBUS LECTI, aut post exactos res JUSSU POPULI \*.*

† Vide supra,  
p. 192.

When the Doctor, founding himself upon these last words, tells us, that AFTER the extinction of the Regal Government, the admission of ALL members into the Senate, was given by THE COMMAND OF THE PEOPLE, one would naturally imagine, he meant to intimate, that it was not so BEFORE that Extinction: yet we have seen, that, in the opinion of both the Doctors, the Roman Senators were ALWAYS chosen by the PEOPLE; and, with regard to the manner of admission into the Senate, there was no difference between the Regal State and the Free State of Rome, except, that, in the former, the KING † presided in the General Assemblies, held for the Election of Senators, and, in the latter, the CONSULS: and therefore, as to the AUTHORITY by which Senators were made, per cooptationem in Patres ab Regibus lecti, means nothing different from per cooptationem in Patres jussu Populi, or lecti in Patres jussu Populi.

I shall leave this Notion to the Contemplation of the Reader; and proceed to Livy's CONFIRMING, by the words *jussu Populi*, the TESTIMONY of Cicero.

CICERO's testimony (according to the Doctor) is, That, after the Regifuge, the whole Roman People elected the annual Magistrates OUT OF the whole Roman People, and, by such Election, did indirectly chuse the Senators OUT OF the whole Roman People; because those Magistrates became, in virtue of their offices, Senators for life.

That Cicero does not bear this testimony, by his words *deligentur autem &c.* has, I think, been sufficiently evinced. But, should his words be construed into the sense Dr. Middleton desires to give them, still the Orator's testimony is not confirmed by the words *jussu Populi*, in the Speech, which Livy makes for Canuleius the Tribune. For this Tribune speaks to the PATRICIANS in general, and reminds them of the source of their Nobility or Patricianship, that they owe it wholly to their ancestors having

\* The full meaning, which I apprehend these words to bear, the Reader may find above, in p. 10, 11.



been chosen into the SENATE [the Assembly of the PATRES] by the KINGS, or, after the expulsion of the KINGS, by THE COMMAND OF THE PEOPLE.

Now it is certain, that the persons, to whom this is said, were none of them descended from *Senators* who had been *Tribunes* or *Ædiles*; for, in that case, they would not have been *Patricians* \*. The Doctor himself (as I have before † observed) † Vide supra, P. 28. tells us, that "the title of *Patrician* belonged only, in a proper sense, to the families of those persons, of whom the SENATE " was composed, in the earliest times either of the KINGS or " the FIRST CONSULS, before the COMMONS had obtained a promiscuous admission to the public honors, and by that means into the " SENATE." The words therefore of *Canuleius* cannot possibly CONFIRM the pretended testimony of *Cicero*, concerning the PEOPLE's indirect election of Senators, by their election of *Tribunes* and *Ædiles*.

But the Doctor has other arguments to support the several parts of his *Hypothesis*.

To prove, or make probable the *People's Right of choosing the members of the Senate*, he has recourse to a Creation of Senators in the time of SYLLA's Dictatorship. This Creation (says the Doctor) was "in order to fill up the Senate, exhausted by his " proscriptions and civil wars, with three hundred new members " from the *Equestrian Rank*: the choice of whom he gave intirely " to the People, in an Assembly of their Tribes, which of all " Elections was the most free." Treat. p. 73. A. U. 672.

It seems strange, that the Doctor should think of employing a capricious act of so enormous a Tyrant as *Sylla*, to be part of the Foundation of an Hypothesis concerning the legal constitutional methods of proceeding in the Government of the Republic. The Doctor himself supposes that *Sylla* gave the choice of the 300 new members to THE PEOPLE, by way of making them some amends for his former Violences; but when the Doctor calls it, paying respect to their ancient Rights and Liberties, this is begging the Question.

\* It is agreed by those, who hold that the *Tribunes* and *Ædiles*, in virtue of their offices, became *Senators*, did not thereby become *Patricians*, nor *patricianize* their families.

Treat. p. 7.  
& 53.

To prove that the PEOPLE, by chusing the annual Magistrates, indirectly chose the Senators, the Doctor has brought, from Cicero's Works, several passages\*: To all which it is sufficient to answer, that they are nothing to the purpose; because Cicero is there speaking of his own time, when the way to the highest Magistracies was open to the virtue and industry of every private Citizen, whether Patrician or Plebeian, and the custom of filling the Vacancies of the Senate with the annual Magistrates had indisputably long prevailed. But the Question to be answered, is, How was the SENATE supplied in the FIRST AGES of the COMMONWEALTH?

It is remarkable that M. Vertot and Dr. Middleton, to support their opposite Opinions, make use of the same two facts (both recorded by Livy) viz.

Liv. l. 9. c. 46.

The Admission of the Sons (or Grandsons) of Slaves into the SENATE, by the CENSOR, Appius Claudius, in A. U. 441.

And the Creation of 177 new Senators by Fabius Buteo, nominated Dictator expressly for that business, just after the Battle of Cannæ, in the year 537.

M. Vertot's reasonings from these facts the Reader may find by turning back to p. 15, 16.

Dr. Middleton's answer to those reasonings is in the following words:

Treat. p. 72.

" M. Vertot argues, that this Nomination of Senators was the  
" pure act and deed of the Dictator, or otherwise there could be  
" no reason to praise him for it: which he confirms by shewing  
" also, on the other hand, that the blame of a bad choice was  
" imputed likewise to the Magistrate; as in the case of Appius  
" Claudius, when he attempted to introduce the grandsons of  
" slaves into the Senate. But this reasoning is not well grounded,  
" for though praise or blame would naturally fall upon the  
" Magistrate, in proportion as what he recommended and attempted

\* In eo loco, in quo me honores populi Romani collocaverunt. Pr. Dom. 31.  
Populo Romano cujus beneficio in hunc ordinem venimus. In Verr. 4. 11.  
Si populum Romanum cujus honoribus in amplissimo consilio, et in altissimo gradu dignitatis, atque in hac omnium terrarum arce collocati sumus. Post redit. in Sen. 1.

Et palam fortissime atque honestissime dicerent, se potuisse judicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent. Pr. Cluent. 56.



"to enact happened to deserve the one or the other, yet these two Cases shew, that the approbation or dislike of the People did not terminate in the mere praise or dispraise of the Magistrate; but affected the very essence and validity of his act: for in the first case, where the People approved, the act stood firm, and had its effect; but in the other, where they disapproved, it was presently annulled and rescinded."

Whether M. Vertot's Reasoning be well or ill grounded, the intelligent Reader will see, by looking on the Passages \* of Livy (inserted below, in the margin) where the two facts are related; and

\* Censura clara eo anno Appii Claudii, et C. Plautii fuit: memoriz tamen felicioris ad posteros nomen Appii, quod viam munivit, et aquam in urbem duxit, eaque unus perfecit: quia ob infamem atque invidiosam Senatûs lectionem verecundiâ victus collega, magistratu se abdicaverat. Appius jam inde antiquitus insitam pertinaciam familiæ gerendo, solus censuram obtinuit.—*Consules, qui eum annum secuti sunt*—initio anni questi apud populum, deformatum ordinem pravâ lectione Senatûs, quâ potiores aliquot lectis præteriti essent, negaverunt eam lectionem se, quæ sine recti pravique discrimine ad gratiam et libidinem facta esset, observaturos: et Senatum extemplo citaverunt eo ordine, qui ante censores Appium Claudium et C. Plautium fuerat. Liv. lib. 9. cap. 29, 30.

Flavium dixerat Ædilem forensis factio, Ap. Claudii censurâ vires nacta, qui Senatum libertinorum filiis lectis inquinaverat; et postea quam eam lectionem nemo ratam habuit, nec in curia adeptus erat, quas petierat opes, humilibus per omnes tribus divisit, forum et campum corrupit. Cap. 46.

Quadraginta millia peditum, duo millia septingenti equites, et tanta prope civium sociorumque pars, cæsi dicuntur; in his—Consulares quidam Prætorii-que, et Ædilitii:—octoginta præterea aut Senatores, aut qui eos Magistratus gessissent, unde in Senatum legi deberent, quum suâ voluntate milites in legionibus facti essent. Liv. lib. 22. cap. 49.

Quum cetera quæ continuis cladibus fortuna minuerat, quantum consiliis humanis assequi poterant, Patres expleissent; tandem se quoque et solitudinem Curiz, paucitatemque convenientium ad publicum consilium respexerunt.—Sp. Carvilius, quum longâ oratione non solum inopiam, sed paucitatem etiam civium, ex quibus in Patres legerentur, conquestus esset, explendi Senatûs causâ, et jungendi arctius Latini nominis, pro magna re suadere dixit, ut ex singulis populis Latinorum, binis senatoribus, si patres Romani censuissent, civitas daretur, atque in demortuorum locum in Senatum legerentur.—Ejus rei oppressâ mentio est. Dictatorem qui censor antè fuisset, vetustissimusque ex eis qui viverent Censoriis esset, creari placuit, qui Senatum legeret: accirique C. Terentium consulem ad Dictatorem dicendum jusserunt. Qui quum ex Apulia—Romam redisset, nocte proximâ, ut mos erat, M. Fabium Buteonem ex S. C. sine magistro equitum dictatorem in sex menses dixit.

Is, ubi cum lictoribus in Rostra escendit, neque duos dictatores tempore uno, quod nunquam antea factum est, probare se, dixit: neque dictatorem se sine magistro

and he will then observe how carefully the Doctor, to serve his Hypothesis, has misinterpreted the words of Livy's narrative.

We see, that, according to the Doctor, Appius Claudius did no more than attempt "to introduce the grandsons of slaves into the Senate." And again, "though praise or blame would naturally fall upon the Magistrate in proportion as what he recommended and attempted to enact, happened to deserve the one or the other."

Now Livy says nothing of attempting, but of effecting. He tells us, that *Plautius*, the Colleague of *Appius* in the Censorship, abdicated his office out of shame, because of the scandalous and odious *Lection* they had made of the SENATE [*ob infamem atque invidiosam Senatûs lectionem* :] And that, in the beginning of the next year, the new Consuls complained to the People, that the Senatorian order was deformed or defaced, by a bad *Lection* of the Senate, in which *Lection* better men, than those who were chosen, [or introduced into the Senate] had been passed over; [*questi apud Populum, deformatum ordinem pravâ lectione Senatûs, quâ potiores aliquot lectis præteriti essent*] and they declared, that they would not abide by that *Lection*, which, without regard to the difference of right and wrong, had been made merely from motives of caprice and personal favour; and accordingly, they called over the Senators by the old List, as it was left by the preceding Censors.

*equitum : nec censoriam vim uni permissam, et eidem iterum : nec dictatori, nisi rei gerendæ causâ creato, in sex menses datum imperium. Quæ immoderata fors, tempus, ac necessitas fecerint, iis se modum impositurum. Nam neque senatu quemquam moturum ex iis, quos C. Flaminius, L. Æmilius censores in Senatum legissent ; transcribi tantum recitarique eos jussurum, ne penes unum hominem judicium arbitriumque de fama ac moribus senatoris fuerit : et ita in demortuorum locum subleiturum, ut ordo ordini, non homo homini prælatus videretur. Recitato vetere senatu, inde primos in demortuorum locum legit, qui post L. Æmilium et C. Flaminium censores curulem magistratum cepissent, necdum in Senatum lecti essent, ut quisque eorum primus creatus erat : tum legit, qui Ædiles, Tribuni Plebei, Quæstoresve fuerant : tum ex iis qui magistratus non cepissent, qui spolia ex hoste fixa domi haberent, aut civicam coronam accepissent. Ita centum septuaginta septem cum ingenti approbatione hominum in Senatum lectis, ex templo se magistratu abdicavit, privatusque de Rostris descendit, licitoribus abire jussis : turbæque se immiscuit privatas agentium res, tempus hoc sedulò terens, ne deducendi sui causâ populum de foro abduceret : neque tamen elanguit cura hominum eâ morâ, frequentesque eum domum deduxerunt. Liv. l. 23. c. 23.*

What,



What, in the *Lection* of Senators by *Appius* and *Plautius*, gave the principal offence, is explained by the Historian, in speaking of *Appius*, on another occasion, *Senatum libertinorum filiis lectis* L. 9. c. 46. *inquinaverat*, he had *stained* or dishonoured the Senate, by introducing into it the sons (or grandsons) of freed-men.

Livy does not say, that *Appius* had *stained* the Senate by attempting to bring into it the sons of freed-men, but by a *Lection* of such men into the Senate, that is, by putting their names on the Censorian List of the Senators: to be thus enrolled was to be *lecti in Senatum*. The Senate could not have been *stained* by an attempt only to bring mean persons into the Senate; nor had the CONSULS, in that case, any thing to *undo*: yet we find, that something, which *Appius* and *Plautius* had done, the Consuls *undid*, by calling over the Senate according to an old List. And so the Doctor seems to understand it in the latter part of the following period, which is in page 101 of his Treatise—"When *Appius Claudius*, in his Censorship, attempted "to introduce the grandsons of slaves into the Senate, they were "all, as we have seen above, immediately [i. e. the next year] "turned out again."

Nor do the CONSULS, in their complaint to the People, pretend that the CENSORS had exceeded their legal power, but only, that they had *abused* it, by an unreasonable choice of persons to be members of the SENATE, preferring the less worthy to the more worthy [*deformatum ordinem pravâ lectione Senatûs, quâ potiores aliquot lectis præteriti essent.*]

And this very complaint to the PEOPLE is a proof, that the PEOPLE had no share in the *Lection*, made the year before by the CENSORS; and that the part which belonged to the Censors, in the affair of creating Senators, was not (as the Doctor pretends) purely ministerial to the sovereign prerogative of the PEOPLE. Treat. p. 17.  
17. 56. 57.  
59.

*Appius Claudius* being, on account of his new road, and his aqueduct, a very great favourite of the Multitude, it was prudent in the new Consuls, who had resolved not to let the Senate continue on the foot of *Appius's* List, to acquaint the PEOPLE with the reasons of that resolution: but it ought to be remarked, that, though the Consuls complained to the PEOPLE of *Appius's* misconduct, it is not said, that they asked the PEOPLE's votes or consent.

for cancelling his Roll of Senators: they declared peremptorily that they would not have any regard to it [*negaverunt eam lectionem se-observaturos.*]

Treat. p. 67.

The Doctor seems to build much on the following words of Livy, when speaking of Appius's Lession of Senators, *eam lectionem nemo ratam habuit*, which the Doctor thus translates, *there was not a Soul, who looked upon that Enrollment as valid*. Doubtless the words, taken by themselves, will bear this construction; but they will likewise bear another, more agreeable to the context, viz. *no body looked upon that Lession as what would stand firm and endure*. Why? Not because the Censors had exceeded their legal power, in making that *Lession*, but because it was a Lession *unprecedented*, and universally judged to be *unreasonable*. Kings are legally the Fountains of honour; nevertheless, were any King, the most absolute in Europe, to make so whimsical an exertion of his Prerogative, as to call up 100 naturalized Negroes to sit with the Peers of his Realm, it would, in all probability, be every body's opinion, that the *Lession* would soon be annulled.

\*Vide supra,  
p. 15, 16.

The other *Fact*, the Lession of Senators by the Dictator Fabius Buteo, seems to be still less favourable to the Doctor's Hypothesis. In his opinion (as we have seen) M. Vertot's *reasoning*\*, on this *Fact*, is not well grounded: we shall see presently whether the Doctor's reasoning has a better foundation. After *explaining*, as he calls it, Cicero's *Deligerentur autem &c.* by the People's chusing the annual Magistrates, and, by those elections, indirectly chusing the Senators—he thus continues:

Treat. p. 7,  
8, 9.

“ But though these offices [*Quæstor, Tribune &c.*] gave both  
“ an immediate right, and actual entrance into the Senate, yet  
“ the Senatorian character was not esteemed complete, till the  
“ new Senators had been enrolled by the Censors, at the next  
“ *Lustrum*, or general review of all the orders of the City, which  
“ was generally held every five years. Yet this enrollment was  
“ but a matter of form, which could not be denied to any of  
“ them, except for some legal incapacity, or the notoriety of some  
“ crime or infamy upon their characters; for which the same  
“ Censors could expel or deprive any other Senator, of what rank  
“ or standing soever.

“ It



" It was one part likewise of the Cenforian jurisdiction, to fill  
 " up the Vacancies of the Senate, upon any remarkable deficiency  
 " in their number, with new members from the *Equestrian* order,  
 " who had not yet born any magistracy: but this was not done  
 " arbitrarily, or without the consent and approbation of the  
 " People. For by observing the manner of proceeding on some  
 " extraordinary occasions, we may collect the legal and regular  
 " method in ordinary cases.

" For example, after the battle of *Cannæ*, the Senate being  
 " greatly exhausted, and no Censors in office, a Dictator was  
 " created for the single purpose of filling up the Vacancies: who  
 " presently ascended the *Rostra*, and in the presence of the  
 " People, assembled in the \* *Forum*, ordered all those, who  
 " remained

\* Dr. Chapman, taking for granted, that the Senators were always chosen by the People in *Comitia*, writes thus: Essay, p. 84.

" The *Comitia*, held for the Election of Senators, seem to have been different  
 " at different times. In the first instance, the People were assembled by *Curias*  
 " [this I have already observed to be a mistake] and as no other *Comitia* were in  
 " being, till the reign of *Servius Tullius*, we may presume, that all elections  
 " into the Senate before that time were made in *Comitia Curiata*. Afterwards,  
 " *MANUTIUS* seems to think, the *Comitia Centuriata* were used upon these  
 " occasions; the greater magistrates being chose, wars resolved on, laws enacted,  
 " and all other important affairs determined in those assemblies: and this is the  
 " more probable, for this further reason, that the *Comitia Curiata* begun gradu-  
 " ally to grow into disuse from that time. *Puto enim, nec opinor absurdum esse*  
 " *quod puto, cum Senatorius ordo cæteris ordinibus dignitate præstaret, eos homines,*  
 " *qui in illum ordinem adscripti sunt, iis comitiis id muneris accepisse, quæ omnium*  
 " *comitiorum præstantissima ac nobilissima ducerentur. Ea porro sine dubio centu-*  
 " *riata fuerunt &c.* Manut. de Sen. Rom. cap. 1.

" But if *Zamoscius's* conjecture be right (says Dr. Chapman) that all other  
 " Elections of the Senate were made in the *Forum*, because *Buteo's* was, it is  
 " probable that they were made also in the *Comitia Curiata* [*Zamosc. de Sen.*  
 " *Rom. lib. 1. cap. 4.*] for these *Comitia* were always held in the *Forum*—  
 " whereas not so much as a single instance can be given of the *Comitia Centuriata*  
 " being held there.—It is sufficient for our purpose" [i. e. for the purpose of our  
 " Hypothesis] " that the People's consent was necessary in any shape; and that a  
 " point of such infinite importance to the publick, was not left to the arbitrary  
 " disposal of this or that particular Magistrate."

Upon this I shall only observe, that *Manutius* gives a plausible reason for con-  
 jecturing, that, if Senators were directly chosen by the People; they were chosen  
 in *Comitia Centuriata*; and *Zamoscius* for conjecturing, that they were chosen in  
*Comitia Curiata*; and from these opposite plausible conjectures, and from the  
 total silence of the ancient writers concerning any such direct Elections, either  
 in

“ remained alive of the last Cenforian List, to be first called,  
 “ and enrolled anew; then those, who since that time had born  
 “ a *Curule Magistracy*, but had not been enrolled, each accord-  
 “ ing to the order of his creation; then those, who had been  
 “ *Ædiles, Tribuns of the People, or Quæstors*; and lastly, those of  
 “ the Equestrian rank, who had born no magistracy at all, but  
 “ had signalized themselves in the war, and taken spoils from the  
 “ enemy: and having thus added one hundred and seventy seven  
 “ new Senators to the last Roll, with the universal approbation  
 “ of the People, he laid down his office.”

Let us now examine, whether this story of the Lession of 177 new Senators, will not, in conjunction with some other facts, mentioned by Dr. Middleton, entirely overthrow his Hypothesis.

1. In the first place, though the Doctor be pleased to say,  
 \* Treat. p. 71. that an Assembly of the People was \* *called*, for the occasion of supplying the Senate with new members, there is not, in the Historian, the least intimation of summoning the People to assemble: nor indeed, in the present distress and exigence, was there time for observing the usual notifications and ceremonies previous to the holding a *general Assembly* of any sort: nor is there any mention of *Comitia Curiata*, or *Centuriata*, or *Tributa*, or of taking the *Suffrages* of the People: nor is the word *Concilium* or *Concio* once used in speaking of this affair. When *Fabius Buteo* ascends the *Rostra*, there is no more appearance of a *regular Assembly* of the Roman Citizens, to chuse Senators by suffrage, than there is of the Citizens of London to give their votes concerning Peace or War, when the King's Herald comes to the Royal Exchange, to proclaim either the one or the other with a foreign State. The Dictator does not ask, What is the good pleasure of the Multitude [*vellent juberentne &c.*] but signifies to them his own sovereign Will and Determination. And the words of LIVY, *cum ingenti approbatione hominum*, I have not observed to be employed by him, in any other instance, to express an approbation, declared by *voting*; nor do they seem to convey that meaning in the present instance.

in the one, or the other sort of *Comitia*, it would seem, that we may plausibly conclude, that *direct Elections* of Senators by the People were not customary and constitutional.

2. Since



2. Since it is manifest, from the Dictator's speech, that he was appointed to supply the place of Two CENSORS, and did actually perform their proper function; and since, in all appearance, he named, by his own authority, the 177 persons, who were to fill the Vacancies of the Senate, it would seem, that the Doctor is greatly mistaken, when he says "That the Censorian power, properly speaking, was not that of making or unmaking Senators, but of enrolling only those whom the PEOPLE had made \*."

3. From these words of LIVY, "Either Senators, or men who had born those Magistracies which gave them a title to be chosen into the Senate, aut senatores aut qui eos magistratus gef- Liv.l.22.c.49.  
" sissent, unde in Senatum legi deberent," it would seem, that not ALL the annual magistrates had that title: and, from what LIVY, after giving us the Dictator's speech †, relates, namely, "That into the † Spoken  
" places of the Senators deceased, he first elected those, who, A. U. 537.  
" since the Censorship ‡ of Æmilius and Flaminius, had born † A. U. 533.  
" Curule Magistracies, and had not yet been chosen into the  
" Senate—" PRIMOS in demortuorum locum LEGIT QUI, post L. Liv.l.23.c.23.  
" Æmilium et C. Flaminiū censes, CURULEM MAGISTRATUM  
" CEPISSENT, NECDUM IN SENATUM LECTI ESSENT—From these

\* Dr. Middleton (in p. 82, 83. of his Treatise) writes thus. "In the general census and review of the City, held by them [the Censors] every five years, though every single Citizen was particularly summoned and enrolled by name in his proper tribe, as a freeman of Rome, yet that solemn enrollment, as Cicero tells us, did not confirm any man's right to a Citizenship, but signified only, that he had PASSED for a Citizen at that time [sed quoniam census non jus civitatis confirmat, ac tantummodo indicat, eum, qui sit census, ita se jam tum gessisse pro cive. Cic. pr. Arch. 5.]: Because the proper power of determining that right resided always in the People. [Mutines etiam civis Rom. factus, rogatione ab Tribunis pl. ex auctoritate Patrum, ad plebem lata. Liv. x. 52. [xxvii. 5.]] Whence we may conclude, by a parity of reason, that the Censorian Roll of the Senate did not either confer or take away any one's right to that high order, unless it were confirmed either by THE PRESUMED CONSENT, or express Command of the Roman People."

We see that the supposed Prerogative, constantly exercised by the PEOPLE, of making Senators, is here reduced to a presumed Consent. Upon this foot, we may say, that Fabius Buteo was chosen to be Dictator by the PEOPLE: and that every thing done by the Senate or the Magistrates, if it was not afterwards, by the PEOPLE, undone, was the People's act. But this will not furnish a satisfactory answer to Earl Stanhope's Question, What was the common and regular manner of Admission into the Senate?

H h

words,

words, I say, it would seem, that *only* the CURULE MAGISTRATES had, in virtue of their Dignity, a right to be chosen, at the next Lustrum, into the Senate. The words *Qui curulem &c.* seem to correspond to *Qui eos magistratus &c.* \*—and indeed, if ALL the Magistrates had, in virtue of their offices, an equal right to be admitted by the Censors into the Senate, one cannot see for what reason Livy uses such words of distinction. It would have been sufficient, if he had said, *Recitato veteri Senatu, inde PRIMOS in demortuorum locum LEGIT, QUI, post L. Æmilium et C. Flaminium censores, MAGISTRATUS CEPISSENT, NECDUM IN SENATUM LECTI ESSENT, ut quisque eorum primus creatus erat: TUM EX IIS QUI MAGISTRATUS NON CEPISSENT, qui spolia &c.*

But if we have here hit upon the true meaning of Livy, in this part of his Narrative, what becomes of the Hypothesis of Dr. Middleton, who contends, *That the Inferior Magistracies, the*

\* M. Crevier's usual sagacity seems to have failed him in a note, which he makes on the words of Livy (lib. 23. cap. 22.) *Sp. Carvilius, quum non solum inopiam, sed paucitatem etiam civium, ex quibus in Patres legerentur, conquestus esset &c.*

*Non solum inopiam, sed paucitatem.]* Omnino hic aliquid mendi esse videtur. Neque enim satis commodè *inopiam* hic interpretari liceat *paupertatem*, cujus mentio prorsus hoc loco inexpectata et intempestiva est. Unus ex MSS. Hearnii habet *inopiam Senatûs*: unde hic sensus effici posse videretur: non solum *inopiam*, id est, penuriam, infrequentiam senatorum ipsorum (quod Gallicè diceremus *le manque de Senateurs*) sed *paucitatem civium* quibus allectis *Senatus* suppleretur. *Inopiam Senatûs* hic dixerit nempe Livius, quemadmodum ferè supra cap. 3. *inopiâ potioris subjiciundi*. Fortasse placeret magis, mutato duorum vocum ordine, legere: *non solum paucitatem, sed inopiam etiam civium*: ut Carvilius queratur, non paucos superesse cives, sed planè nullos, qui in Senatum legi possint. Idque omnino verum putamus.

M. Crevier takes notice here, that one of Hearn's MSS. has *inopiam Senatûs*; and, were there no such reading to help us to fix the sense, should we not naturally supply the word PATRUM?—non solum *inopiam* [PATRUM] sed *paucitatem etiam civium* ex quibus in PATRES legerentur. The words *Paucitatem civium* are not spoken of the Citizens in general, but of those Citizens, who, by the Magistracies they had born, were qualified, or had a right to be admitted into the Senate by the Censors: Citizens, *ex quibus in patres legerentur*; Citizens, *qui eos magistratus gessissent unde in Senatum legi deberent*. Had all the Curule Magistrates, created since the Censorship of Æmilium and Flaminium, been living, the number would not have been considerable: and Livy intimates, that some of them lost their lives in the battle of Cannæ, at which time they served as volunteers. The rest, as LIVY tells us, were chosen into the Senate by the Dictator, Fabius Buteo. Carvilius's complaint therefore could not be, what M. Crevier thinks, *non paucos superesse cives, sed plane nullos qui in Senatum legi possint*.

Tribunate,



Tribunate, Edileship, and Quæstorship, "gave both an immediate right, and ACTUAL ENTRANCE into the SENATE;" and that the Censors Enrollment (which made the Senatorian character complete) "was but a matter of form, which could not be denied to any of them, except for some legal Incapacity, or the notoriety of some Crime, or Infamy upon their Characters; for which the same Censors could expel or deprive any other Senator, of what rank or standing soever?"

Should the passages, above given from Livy, be thought not sufficient, without auxiliary strength, to overthrow the Doctor's Hypothesis, yet surely they will be able to do it, when assisted by a Story in Valerius Maximus, which, the Doctor says, "has greatly perplexed all those who have treated this Question," [i. e. all those who have a groundless Hypothesis to defend] "and is thus related.—Q. Fabius Maximus, on his Return from the Senate, happening to meet with P. Crassus, told him by way of News, what had been resolved secretly about the [third] Punic War, remembering, that Crassus had been Quæstor three years before, and not knowing that he had not yet been put upon the Roll of the Censors, and so had no right to BE in the Senate \* :

Treat. p. 86.

"for Ignarus nondum à Censoribus in ordinem Senatorium allectum : Quo uno modo his, qui jam honores gesserant, aditus in Curiam dabatur.

"Manutius (says Dr. Chapman) seems to confine this right to those, who had born Curule offices; but I think, there is reason to believe that it extended also to those, who had filled inferior Magistracies. For otherwise, how could Q. Fabius Maximus take it for granted, that P. Crassus was then a member of the SENATE, because he had been Quæstor three years before?"

Essay, p. 61.

If FABIVS took it for granted, that CRASSUS was then a Senator, BECAUSE he had been a Quæstor three years before, FABIVS reason'd but weakly : For supposing that the Quæstors had, in this Period of the Commonwealth, a right, by custom, to be put on the Censorian Roll of Senators, yet the Censors might possibly have omitted Crassus's name on account of some misconduct in the execution of his office; or some scandalous behaviour in his private life; or it might have happened, that there was no vacant place in the Senate to receive him; or that, since his Quæstorship, there had been no Censors to enroll him: and this indeed appears to, have been the very case. The last Censors, M. Valerius and C. Cassius, were in office during the year † 599, and only six months of the year 600, in which P. Crassus was Quæstor : which, perhaps, may be thought to furnish sufficient ground for doubting the Truth of Valerius's Story. For it seems hardly credible, that Fabius should remember, that Crassus had been Quæstor three years before, and yet not remember, that there had been no Censors in the Republic during the last three years. [Dr. Middleton, who

† Fast. Cap.

"for which Fabius was severely reprimanded by the Consuls." Val. Max. 2. 2. 1.

Certainly no Hypothesis-monger was ever more fully resolved, that his Hypothesis should prevail, in spite of all opposition, than Dr. Middleton in the present instance: For thus he goes on;

Treat. p. 87.

"VALERIUS must not be understood to assert, that the Quæstors  
"had no right to an admission into the Senate, till they were  
"enrolled by the Censors: since it appears from unquestionable  
"facts, and testimonies, drawn from the practice, at least, of the  
"later ages of the Republic, that they had not only an Entrance  
"and Vote in it, but a free liberty of speaking also or debating on  
"all Questions: so that I see no way of accounting for the offence  
"committed by Fabius, in giving part of the Deliberation to  
"P. Crassus, but that it was one of that *secret kind*\*, to which  
"the OLD Senators only used to be summoned in the early ages."

Now,

occasionally considers Valerius Maximus as a dealer in fables, seems to doubt of a fact, relating to the Tribunes, which is reported by him in this very Chapter.] However, thus much may, without question, be gathered from the Story of Fabius and Crassus, whether it be true or not, that Valerius Maximus, who flourished about the year of Rome 780, was of opinion that, about 200 years before, it had been customary for the Censors to put the names of those persons, who had served the office of Quæstor, upon the List of Senators; and that *no man, till his name was so enrolled, had admission into the Senate, although he had been honoured with a Magistracy.* And this is a testimony that bears point blank against the Doctor's Hypothesis.

\* "Julius Capitolinus (says the Doctor in a note) mentions a Decree of the Senate of this *Secret-Kind*, which he calls S. C. *tacitum*—from which they excluded their clerks and servants, performing that part themselves, lest any thing should get abroad. Capitolin. de Gordianis, cap. 12. In the early times of the Republic there are several instances mentioned by Historians, of such private meetings of the Senate, summoned by the Consuls to their own Houses, to which none but the old or proper Senators were admitted, and of which the Tribuns usually complained. Vid. Dionys. l. x. 40. l. xi. 55. 57."

One would imagine, that the Doctor, by such citations, meant to play upon his Readers, not instruct them. Could Fabius mistake Crassus for a clerk or a servant? And, as to the two instances of *Private Meetings of Senators*, mentioned by Dionysius; the first was, not of old or proper Senators only, but of such Senators only as the Consuls judged to be the most resolutely determined, and the best qualified, by the great figure they made in the Republic, to oppose the enterprise of the Tribunes.—*Consules, convocato domi concilio patrum eorum qui fortissimi erant, et qui tunc in Republica maxime florebant, eos docuerunt omnibus modis legem impediendam esse, &c.* Hudson.

And



Now, to my apprehension, it does not seem, with regard to the Doctor's Hypothesis, to be of any importance, to account for the offence committed by Fabius; nor of any importance to ascertain the *Fact*, which Valerius may possibly have received upon insufficient testimony; but to account for Valerius's mistake (if it be a mistake) in saying, that *no man, though he had been a Magistrate, could have entrance into the Senate*, or, as Dr. Middleton expresses it, *had a right to be in the Senate, but by that one method, the being put upon the Roll of the Censors*; Quo uno modo his, qui jam honores gesserant, ADITUS IN CURIAM dabatur. For this does most violently oppugn the Doctor's Hypothesis.

Let us see, however, who they were whom the Doctor styles the OLD Senators.

" Though ALL the Magistrates of the City had a right to a <sup>Treat. p. 83.</sup>  
 " place and vote in the SENATE, as well during their office, as <sup>84.</sup>  
 " after it, and before they were put upon the Roll of the Censors,  
 " yet they had not probably a right to speak or debate there on any  
 " question, at least, in the earlier times of the Republic. For this  
 " seems to have been the original distinction between them and  
 " the ancient Senators, as it is plainly intimated in the formule of  
 " the Consular Edict, sent abroad to summon the Senate, which  
 " was addressed to all Senators, and to those who had a right to  
 " vote in the Senate \*.—

" From

And the second was a private Assembly (held by the Consuls, in 308) from which even Valerius and Horatius, who had suppressed the Decemvirate, and who were Consulars, and the most popular men in the State, were, with other eminent Senators, excluded; a Proceeding with which Canuleius, the Tribune, bitterly reproaches the Consuls.—" *Pravorum institutorum initia in remp. eos in-*  
 " *vehere dixit, qui occulta concilia in privatis aedibus convocarent. Quod igitur*  
 " *alii Senatores ab illo privato Consilio abacti fuissent, minus se mirari dixit: sed*  
 " *quod M. Horatius, & L. Valerius, qui Decemviratum sustulerant, viri Consu-*  
 " *lares, nec ullis minus idonei ad Reip. consulendum, indigni fuissent judicati qui*  
 " *in Senatum vocarentur, se obstupefactum esse &c.*"

\* " From which distinction (adds the Doctor) these last, who had onely a  
 " right to vote, were called, by way of ridicule, *Pedarians*; because they signified  
 " their votes by their feet, not their tongues; and, upon every division of the  
 " House, went over to the side of those, whose opinion they approved. It was  
 " in allusion to this old custom, which seems however to have been wholly  
 " dropt in the later ages of the Republic, that the mute part of the Senate con-  
 " tinued still to be called by the name of *Pedarians*, as we learn from Cicero,

" who,

Treat. p. 85.

“ From the distinction, signified above, in the *formule* of  
 “ summoning the Senate, it may not perhaps be improbable,  
 “ that

“ who, in giving an account to *Atticus*, of a certain debate and decree of the  
 “ Senate upon it, says, *That it was made with the eager and general concurrence*  
 “ *of the Pedarii, though against the authority of all the Consulars.*” Ad Att. 1.  
 19.

The Author of the *Dissertation upon the Constitution of the Roman Senate* (p. 107)  
 seems to have placed this matter in its true light.—“ There were three methods,  
 “ by which the Senators declared their sense of what came before them; the first  
 “ was, by their *Assent* or *Approbation*, which they signified as they sat in their  
 “ places; and this is what Cicero means, when he tells Metellus, *nulla est à me*  
 “ *inquam sententia dicta in fratrem tuum, quotiescunque aliquid est actum,*  
 “ *sedens iis assenti, qui mihi lenissime sentire vult sunt.* 5. B. 2. Ep. The second  
 “ was, by delivering their *Opinions with their Reasons*, which they did standing  
 “ up in their places. This requires neither proof nor explanation. The third  
 “ method was, by dividing without giving their *Reasons*, that is, by going over  
 “ either to this or that side of the House, and this was called *pedibus in sententiam*  
 “ *ire*, from whence came the appellation of *Pedarii Senatores*; and this is the  
 “ sense Festus has given of the word, *Pedarium Senatorum—ita appellatur, quia*  
 “ *tacitis transeundo ad eum, cuius sententiam prebat, quid sentiat, indicat.* All  
 “ these three are particularly mentioned in the following passage of Livy, 27. B.  
 “ c. 34. It relates to M. Livius Salinator, chosen Consul with C. Claudius  
 “ Nero, in the 547th [546th, Fast. Cap.] year of Rome, whose Consulship was  
 “ illustrated by the Defeat of Asdrubal: that Author there says of the former,  
 “ who, after a long absence from public affairs, had been obliged by the Censors,  
 “ to give his attendance in the Senate, *Sed tum quoque aut verbo assentiabatur,*  
 “ *aut pedibus in sententiam ibat, donec cognati eum hominis causa, M. Livii*  
 “ *Macati, quum fama ejus ageretur, stantem coegit in senatu sententiam dicere.*—  
 “ By this passage of Livy, it plainly appears, contrary to the opinion of Gellius,  
 “ and of all the modern writers, that those Senators, who were called *Pedarii*,  
 “ were not distinguished from the rest of their body, any otherwise, than by  
 “ their behaviour upon that particular occasion; that is, they were called so,  
 “ because they then divided without giving their *Reasons*; for it must be observed,  
 “ that Livius Salinator, whose manner of voting is here taken notice of by Livy,  
 “ was, at that time, a consular Senator, and consequently enjoyed all the rights  
 “ annexed to the Dignity of a Senator.”

This account does not in any measure disagree with what Cicero says in his  
 Letter to Atticus. For we cannot suppose, that Cicero meant to divide the  
 members of the Senate into *Consulars* and *Pedarii*, or into Senators who had a  
 right to speak, and Senators who had not that right. He only informs Atticus,  
 that those Senators who did not speak on that particular occasion concurred with  
 those who delivered an opinion, that was contrary to the opinion of all the  
*Consulars*.

M. MONGAULT translates the word *Pedarii* (in this Letter and the next) *les*  
*Senateurs du bas ordre*, and gives us the following Note.

“ *Senatores*



" that on certain urgent occasions, in which an extraordinary  
 " dispatch or secrecy was required in their counsils, the latter  
 " part of the Edict might be omitted, and none but the OLD and  
 " PROPER Senators called to the meeting: and if this was the  
 " case, as some writers have imagined \*, it will clear up the  
 " difficulty of a Story in *Valerius Maximus*, which has greatly  
 " perplexed † &c."

† Vide supra,  
 p. 235.

I doubt much whether these *old* and *proper* Senators do clear up the difficulty, even to the Doctor's own satisfaction. For, notwithstanding what the Doctor says of the *Formule* of the Consular Edict, and the *Probability* of the Magistrates not having, in THE EARLIER TIMES, a right to SPEAK in the Senate, till they were put upon the Censors Roll, he is not always of this opinion.

" *Senatores peditarii*, c'étoient ceux qui n'avoient point passé par les magistratures  
 " *Curules*; et ils étoient ainsi appelés, parceque tous ceux qui y avoient passé  
 " opinant devant eux, ils ne formoient point ordinairement d'avis, et se conten-  
 " toient de marquer de quel sentiment ils étoient, en se rangeant du côté de celui  
 " dont ils suivoient l'avis, ce qui s'appelloit *peditus in sententiam ire*. Aussi on  
 " disoit qu'un avis *peditaire*, c'étoit une tête sans langue. Je dis, que ces Sena-  
 " teurs n'opinoient point ordinairement, parceque cela a ses exceptions; et dans  
 " cette Lettre même on voit que *Servilius* le fils, qui n'avoit encore été que  
 " Questeur (ce qui étoit le premier degré des Magistratures) opina, et que sur  
 " son avis on ajouta un article au *Senatus consulte*.—Aulu-Gelle prétend que  
 " *Senatores peditarii*, c'étoient ceux qui avoient droit d'entrer au Senat, et d'y  
 " opiner, quoiqu'ils ne fussent point encore proprement Sénateurs, parce qu'ils n'avoient  
 " point été aggrégés à ce corps par les Censeurs. Mais quel rapport cela a-t-il  
 " avec la signification du mot *peditarii*? De plus, *Dion* nous apprend que l'année  
 " précédente, les Censeurs avoient aggrégé au Senat tous ceux qui avoient passé  
 " par les Magistratures: il ne pouvoit donc guères y avoir alors de ces Sénateurs  
 " *peditaires*, selon l'interprétation d'Aulu-Gelle: au lieu qu'on voit par ce que  
 " *Cicéron* dit ici, et dans la Lettre suivante, que ce furent proprement eux  
 " qui formèrent le Decret qui étoit contraire à *Atticus*. Aul. Gell. lib. 3.  
 " cap. 8. *Dio*, lib. 37."

By this note it appears, that M. Mongault, though he supposes the appellation of *Senatores peditarii* to mean the Senators of the lower order, that is, those Senators who had not born any *Curule* Magistracy; and supposes that they were so called from the manner in which they ordinarily signified their opinions, yet he does not suppose that the appellation imported their being barred from signifying their opinions by speaking: he holds, that they had the same right to speak in their turns as the rest, and occasionally made use of that right: so that what he says agrees well enough with the opinion of the Author of the *Dissertation*, in relation to this matter.

\* Vide Pighii Annales, Tom. 1. p. 72.

\* Y. of Rome  
308.  
Y. of the Re-  
pub. 64.  
Treat. p. 44.  
and vid. supr.  
p. 36.

When he wants to prove that the *Tribunes*, in THE EARLIER \*  
TIMES of the Republic, were *Senators*, he argues from their  
SPEAKING in the Senate; "in which we find them (*says the*  
*Doctor*) debating † and enforcing with great warmth the de-  
mands of the *Commons* for a liberty of Intermarriages with the  
" *Nobles*, and the Choice of a Plebeian Consul ‡."

And as to the Edicts, referred to by the Doctor, is there not  
some ground to question whether, in his translation, he gives the  
true sense of *dicere sententiam*?

A. U. 538. Consules edixerunt, quoties in Senatum vocassent, uti *Senatores*,  
*quibusque in Senatu DICERE SENTENTIAM liceret* ad Portam  
Capenam convenirent. Liv. 22. 32.

A. U. 562. Adeoque in apparatus curamque ejus belli civitas intenta fuit,  
ut P. Cornelius consul ediceret, *Qui Senatores essent, quibusque in*  
*Senatu SENTENTIAM DICERE liceret, quique minores Magistratus*  
*essent, ne quis eorum longius ab urbe Roma abiret, quam unde eo die*  
*redire posset: neve uno tempore quinque Senatores ab urbe Roma*  
*abessent.* Liv. lib. 36. cap. 3.

In the first of these Edicts, the sense of the Summons, accord-  
ing to the Doctor, is, *To all Complete Senators, who have a right*  
*both TO VOTE and TO SPEAK or DEBATE, and to those Senators,*  
*who, not having been enrolled by the Censors, have only a right TO VOTE.*

† The Doctor cites Liv. lib. 4. cap. 1. 2. 3., and Dionys. xi. 57.

The words of Livy, from which the Doctor gathers that the Tribuns debated  
&c. are these. Tum C. Canuleius PAUCA VOCIFERATUS *necquicquam terri-*  
*tando Consules avertere plebem à cura novarum legum, nunquam eos se vivo delectum*  
*habitueros, antequam ea, quæ promulgata ab se collegisque essent, plebes scivisset, con-*  
*festim ad concionem advocavit.*

And Dionysius, in the place referred to, tells us, that Canuleius *did not say*  
*one word about the Laws proposed*; that he only reproached the Consuls for holding  
private meetings; from which the friends of the Plebeians were excluded.

‡ "That the Quæstors had a direct admission into the Senate, and were stiled  
" and treated as Senators, and had a liberty also of SPEAKING in their turn,  
" as well as the rest, is evident (*says the Doctor*) from many clear facts and  
" testimonies. For instance; C. MARIUS—not being able &c. CICERO, after  
" he had been Quæstor &c. He [Cicero] stiles P. CLODIUS a Senator &c. and  
" in a congratulatory letter to CURIO &c. Lastly M. CATO, when he was  
" Quæstor &c."

I just mention the names of the persons whom the Doctor chuses for instances;  
because thereby it appears, that his *clear facts* and *testimonies* are nothing to the  
purpose, those persons not having lived within the Period to which Earl Stanhope's  
Question was referred, but in the very latest times of the Republic.

Vide supra,  
p. 208.



The second Consular Edict distinguishes the Persons, to whom it is addressed, into *Senatores*, and *quibus in Senatu sententiam dicere liceret*, and *qui minores Magistratus essent*; from which distinction one would naturally infer, that these *minor Magistrates* neither were Senators, nor had even the Privilege of those persons who might *sententiam dicere*. Otherwise, whatever be the meaning of *sententiam dicere*, the words *quique minores Magistratus essent*, in the Edict, are superfluous; because these Magistrates would be comprehended in *quibus in Senatu sententiam dicere liceret*. I say, whatever be the meaning of *Sententiam dicere*; for I see no good reason for the Doctor's so peremptory determination, that the words shall signify TO VOTE. Why not to speak, or deliver an opinion? In p. 89. of the Doctor's Treatise, where he cites *Cic. in Verr. 5. 14.*—*Antiquiorem in Senatu sententiæ dicendæ locum*,—he thus translates the words—"an earlier turn of delivering his opinion in the Senate." And, in the Story, above mentioned, of Livius Salinator, *sententiam dicere* is distinguished, not only from *pedibus ire in sententiam*, but from *verbo assentiri*. And if we admit this distinction, the sense of the former Summons will be, *To the Senators, and to those who have the Privilege of giving advice or speaking their opinion in the Senate.*

"It may be observed (says Mr. Kennet) that besides the proper Part 2. b. 3.  
 "Senators, any Magistrates might come into the House, during ch. 2.  
 "their Honour, and they who had born any Curule Office, after its  
 "expiration. But then none of those, who came into the House  
 "purely upon account of their magistracy, were allowed the  
 "privilege of giving their judgments upon any matter, or being  
 "numbered among the persons who had votes. Yet they tacitly  
 "expressed their mind, by going over to those Senators whose  
 "opinions they embraced."

If this observation (for which I find only *Lipsius de Magistrat.* in the margin) be well founded, it may help us to fix the meaning of the second Consular Edict above mentioned. The Assembly, when formed, would consist of the proper Senators, who alone had a right TO VOTE; the *Quondam-Magistrates*, who were Candidates for the Senatorian dignity, and who, though not yet on the Censors Roll, and therefore not having a right TO VOTE, had, nevertheless, a right TO SPEAK their opinions, *sententiam dicere*;

and the Inferior Magistrates (actually in office) who had no right either to vote or to speak, yet might tacitly express their minds.

And this may likewise help us to understand the Story of Fabius and Crassus in Valerius Maximus. For as we see, that in the first Edict, the *Magistratus minores* are omitted; so, when the important affair, of a new war against Carthage, was to be debated, and the Resolution kept *secret*, it is not improbable that the CONSULS, in their Edict, summoning the Senators to assemble, might omit \* *Quibusque in Senatu sententiam dicere liceret*, these having no right to VOTE, and their approbation therefore not being what would contribute any thing to the validity of a Decree, which the CONSULS and the governing part of the SENATE had predetermined to make.

Essay, p. 97,  
98.

† Vide supra,  
p. 36, 37.  
|| A. U. 262.  
† A. U. 297.

DR. CHAPMAN, who says, it "is known with certainty, that the Tribunes of the People obtained that honour [the honour of Admission † into the Senate] within less than two years || after their first creation," adds in a Note, "Yet, many years † after the Tribunes had been thus admitted into the House, they were not suffered to deliver their opinions, in the quality of members; (see Dionys. lib. 10. cap. 31.) though at the same time they were authorised, by virtue of their office, to obstruct

\* When Dr. Middleton says, as above, that some writers have imagined, that the latter part of the Edict might be omitted: on certain occasions, in which dispatch or secrecy was required, he refers us to *Pighii Annales*, Tom. I. p. 72.

— "Cicero Verrinarum secunda, primum gradum honoris appellat Quæsturam, Nam eo magistratu functus, honores adeptus dicebatur, et in Senatum veniebat. SENTENTIÆQUE DICENDÆ JUS HABEBAT, etiam si equestria adhuc ordinis, et nondum a Censoribus, alijsve, quibus potestas legendi eum ordinem erat, in Senatum esset lectus. Nam hi soli SENATORES vocabantur, qui erant in Senatum lecti; alii vero qui SENTENTIÆ JUS HABEBANT, in Senatu esse dicebantur. Hoc demonstrat antiquum Edictum quo Senatum cogere solet Consul, aut Prætor, alijsve magistratus, UTEI, SENATORES, ADSINT, QUIBUSQUE, IN SENATU, SENTENTIAM, DICERE, LICET. Cujus apud Festum, Gellium, Livium, aliosve auctores frequenter est mentio. Si quando tamen in Edicto illa verba postrema omittuntur, conveniebant tantum soli Senatores, id est, in Senatum lecti. Quod fieri solet, cum de gravissimis reipub. rebus, ac maxime arcanis, agendum foret, ut minor adesset juniorum turba. Atque tum in curiam vocari Senatus dicebatur. Cujus rei ut exemplum adferamus, P. Crassus quæstor † &c. &c." It would seem that Pighius makes no distinction here between *sententiæ jus* and *sententiæ dicendæ jus*; but it does not satisfactorily appear what he means by those terms.

† Vide supra,  
p. 235.



"the passing of any decree, by interposing their single *veto* or  
" *intercession*."

*Ἐννοησὶ ἀποφύκειν* are Dionysius's words, for which the Doctor giving us, as a just translation, *to deliver their opinions*, I presume he means, that the Tribunes were not suffered to signify their Opinions by *speaking* any thing except the word *veto*, when they disapproved the Proceedings of the *Fathers*. And, in the Doctor's Essay, there is another passage, where he plainly excludes the *Tribunes*, with the other inferior Magistrates, from the right of SUFFRAGE, after the expiration of their Magistracies; and in this particular he differs from Dr. Middleton.

"The next Qualification of a Roman Senator, arose from the *Essay*, p. 105.  
" discharge of some office, of a public nature. The *greater*  
" *Magistrates*, such as Dictators, Consuls, Censors, Prætors, and  
" Curule Ædiles, had the right of SUFFRAGE in the Senate,  
" even after the expiration of their offices; but the *inferior*,  
" such as *Tribunes*, *Plebeian Ædiles*, and *Quæstors*, were not in-  
" titled to THAT PRIVILEGE, till they were actually inrolled.  
" This however they had a right to be at the first Lession or  
" Call of the Senate; nor could the Censors refuse doing it, but  
" for the same reasons, as would justify the omission of such, as  
" already made a part of that illustrious Order."

And in p. 57 of his Essay, "If the CENSORS had the sole p. 57.  
" power of nominating the Senate, how came it, that not only  
" the CONSULS and PRÆTORS, but even the *Inferior Magistrates*,  
" such as Ædiles, Tribunes of the Commons, and Quæstors, were  
" entitled to A SEAT there? How came it, that even after the  
" expiration of their office, those who had been Curule Magistrates  
" had a right to come into the House\*, and deliver their opinions†;  
" and

\* By confining this Privilege to the Curule Magistrates, the Doctor avoids the difficulty arising to Dr. Middleton from the Story of Fabius and Crassus.

† The Doctor, in support of this Privilege, attributed by him to the Curule Magistrates, cites a passage, in A. Gellius, which, to my apprehension, seems p. 58.  
flatly to deny it. Nam et curulibus magistratibus functi, qui nondum a Censoribus in Senatum lecti erant, Senatores non erant; et quia in postremis scripti erant, non rogabantur sententias, sed quas principes dixerant, in eas discedebant. A. Gell. lib. 3. cap. 18. The words which, in A. Gellius, immediately precede these, attribute to all persons, who had born any magistracy, a right of coming into the House and signifying their Opinion [not of speaking it.] Qui nondum à Censoribus

" and that all of them were of course inrolled as Senators at the  
 " next Census &c?

I shall finish these Observations with a word concerning the  
 Power of the CENSORS, as it is represented by the two Doctors.

Treat. p. 41.

" The CONSULS (*says Dr. Middleton*) whose province it then  
 " was [*i. e. before the institution of the CENSORS*] to hold the  
 " CENSUS, and general Lustration of the Citizens, as oft as they  
 " found it necessary, had, in consequence of that duty, the task also  
 " of setting the Roll of the Senate at the same time."

p. 51.

And (in p. 51) " I shall procede in the next place to consider  
 " the state of the SENATE, after the establishment of the CENSORS,  
 " and try to reconcile my Hypothesis, with the great Power and  
 " Authority delegated to these Magistrates in the affair of creating  
 " Senators, in which the whole difficulty of the present question  
 " consists."—

p. 56.

—" Let us examine then—*what part really belonged to the*  
 " CENSORS, in this affair of creating Senators. This Magistracy  
 " was first instituted A. U. 311\*. not to take any share of power  
 " from the People, but of trouble only from the CONSULS:—  
 " and the special business of these Censors was to ease them of  
 " the task of holding the Census and Lustrum, which the CONSULS  
 " had not been able to do for seventeen years past, that is, to  
 " take a general review of the whole People—and lastly, to call  
 " over the Senate, and make a fresh Roll, by leaving out the  
 " names of the deceased, and adding those, who had acquired a  
 " right to fill their places; that is, *the Magistrates who had been*  
 " *elected into their offices since the last Call.*

\* 310. F. Cap.

Censoribus in Senatum lecti erant, Senatores quidem non erant; sed quia  
 honoribus populi usi quidem erant, in Senatum veniebant, et sententiæ jus [not  
 sententiæ dicendæ jus] habebant. Nam et curulibus &c. (*as above*) hoc signifi-  
 cabat edictum, quo nunc quoque Consules, quum Senatores in curiam vocant,  
 servandæ consuetudinis causâ tralatitio utuntur. Verba Edicti hæc sunt:  
 SENATORES. QUIBUS. Q. IN. SENATU. SENTENTIAM. DICERE. LICET.

As A. Gellius, by the words *non rogabantur sententias*, and by his citing, on  
 this occasion, the old verse of Laberius, *Caput sine lingua Pedaria sententia est*,  
 seems to deny to all the late Magistrates, *inferior* and *curule*, the *jus sententiæ*  
*dicendæ*, till inrolled by the CENSORS, I cannot guess who they were, whom he  
 supposed to be described in the Edict by *Quibus in Senatu sententiam dicere licet*,  
 unless they be the *inferior Magistrates*, actually in place. I observe, that his  
 authority is not universally considered as decisive.

" But,



" But, besides *this task, which was purely ministerial*, they had  
 " the particular cognizance and inspection of the manners of all  
 " the Citizens, and, in consequence of it, a power to censure or  
 " animadvert &c. \* — But this power reached no farther than to Treat. p. 58.  
 " inflict some public mark of ignominy, on lewd and vicious  
 " persons, in proportion to the scandal, which they had given,  
 " by degrading or suspending them from the privileges of that  
 " particular rank which they held in the City. This was their  
 " proper jurisdiction, and the foundation of their power over the  
 " SENATE; by virtue of which they frequently purged it of some  
 " of its unworthy and profligate members, by leaving out of the  
 " new Roll, the names of those Senators, whom they found  
 " unworthy to sit in that august Assembly, for the notoriety of  
 " their Crimes; which they used commonly to assign as the cause  
 " of their inflicting this disgrace. There are many examples of  
 " Senators thus expelled by the Censors, generally for good  
 " reasons; yet sometimes through mere peevishness, envy, or  
 " revenge: but in such cases, *there was always the liberty of an*  
 " *appeal to the final judgement of the People.* So that the Censorian  
 " Power, properly speaking, *was not that of making or unmaking*  
 " *Senators, but of enrolling only those whom the People had made;*  
 " and of inspecting their manners, and animadverting upon their

\* Concerning the CENSORS Dr. Chapman thus writes:

—" Though the name of CENSORS was unknown at Rome, till the 310th Essay, p. 47.  
 " year of the City, their power and authority was very far from being so.  
 " The CENSUS, which was begun by *Servius Tullius*, had till then been managed  
 " by the CONSULS; and the only reason for putting it into other hands, at that  
 " time, was, because the continual wars, in which the Republic was engaged,  
 " would no longer suffer them to go through a work of that kind. *Their power*  
 " therefore to make an enumeration of the persons, and an estimate of the  
 " fortunes of their fellow Citizens, *they derived from the CONSULS*, whom they  
 " succeeded; and I am inclined to think, that *all the share they had in the choice*  
 " *of Senators was conveyed to them in the very same channel.* For as it was usual  
 " to make a public *Lection*, or recital of the SENATE, and to admit new members  
 " or displace old ones, *at the end of every CENSUS; it was considered, as making*  
 " *a part of the CENSUS itself, and transferred with it for that very reason.*"

—" LIVY expressly says, that the People appointed by suffrage, Papirius and  
 " Sempronius, to transact the business of the CENSUS, and that their title of  
 " CENSORS was derived from their employment. And *is it possible then to*  
 " *conceive, that they should have any other power, in relation to the SENATE,*  
 " *than what was connected with this business of the CENSUS, and for that reason*  
 " *transferred with it?*"

p. 52.

" vices;

"vices; over which they had a special jurisdiction delegated by the People."

Treat. p. 60.

—"It is certain, that several Laws were made at different times to regulate the Conduct of the CENSORS, of which we

p. 61.

have now no remains. —Cicero takes occasion to observe in one of his speeches, *that their ancestors had provided many*

\* Cic. pro

Cluent. 42,

43. 44.

*checks and restraints on the Power of the CENSORS: that their Acts were often rescinded by a Vote of the People* \* :—And in

† Fragment

de Repub.

lib. 4.

another place he says, *that the judgement of the Censors had no other force, than of putting a man to the blush; and that it was*

*called Ignominy, because it was merely nominal* †.

The Doctor gives some instances of CENSORS "called to an account before the People for their Administration in the Cen-

Treat. p. 63.

sorship," and then proceeds—"Now these Facts DEMONSTRATE †, that the Power of the CENSORS, instead of being

absolute, as your Lordship contends, in the case of *making*

*Senators*, had in reality little or no share in it; and was much

limited also and restrained, in, what is allowed to be their proper jurisdiction, the affair even of *unmaking* or degrading

them."

p. 66.

—"The CENSORS were generally men of the first dignity in the City, and always of Consular rank; so that their acts

had naturally a great weight: and the severity of their discipline was considered by the Honest of all Orders, as a great guard

and security to the Republic: and when they acted even on spitefull and peevish motives, yet the parties injured would not

always take the trouble of going through a trial, since they

† This is just such a Demonstration as might be given, *That the Roman DICTATORS were not appointed to be Sovereign Magistrates without appeal* (though introduced by the artful contrivance of the Senate expressly to defeat the Valerian Law of *Appeal*) because the *Tribunes*, even while *Camillus* was Dictator (A. U. 384.) passed a Law, imposing on him a heavy fine in case he employed his Sovereign Authority to hinder the People from giving their Votes on certain Bills then depending: and *Fabius*, the father, in the affair of his son, *appealed* from the Dictator *Papirius* to the People, A. U. 428. and the *Tribunes* actually commenced a Prosecution against *Manlius Imperiosus* for misconduct in his *Dictatorship*, A. U. 391.

In all States, the Magistrates, even the most absolute Kings, are, in some sense, Ministers of the People; and in all States there must be a Power of rectifying gross abuses of that Authority with which Magistrates are legally invested.

"could



" could be relieved without it, either by the next *Censurs*, as  
 " they commonly were ; or by obtaining a new Magistracy, in  
 " the next annual elections ; by which they were restored of  
 " course to the Senate. But if any of these animadversions con-  
 " tinued to have a lasting effect, it was always owing to an  
 " universal approbation of them from all the Orders of the City :  
 " for whenever they appeared to be violent, or grossly unjust, neither  
 " the Senate nor the People would endure them for a moment \*."

" Thus when *Appius Claudius* the Censor &c."—Here the Treat. p. 67.  
 Doctor relates the Story of *Appius's* bringing the sons of freed-men

\* This seems to be fully contradicted and overthrown, not only by the Story of *Appius Claudius*, but by another which the Doctor cites in support of his Assertion, I mean the Story of *Mamercus Emilius*, who, in his second Dictatorship, passed a Law for shortning the duration of the Censors Magistracy to 18 months, instead of five years ; which (as the Doctor himself relates the Story from *Livy*) " provoked the *Censors* so highly, that in revenge for his abridgment  
 " of their Authority, they put the last disgrace upon the Dictator himself, by  
 " turning him even out of his Tribe, and depriving him of his Vote as a Citizen." The Doctor adds—" But a proceeding so extravagant was immediately over-ruled, nor  
 " suffered to have the least effect : and the People were so enraged at it, that they  
 " would have torn the Censors to pieces, had they not been restrained by the  
 " Authority, [i. e. advice, for he was not now in any office] of *Mamercus* himself ;  
 " who, within eight years after, was made Dictator again for a third time. So little  
 " regard was paid, as *LIVY* observes, to the Censorian mark of disgrace, when it  
 " was inflicted unworthily." There is no opinion, in support of which, facts and testimonies may not be produced, if the Undertaker will practise such liberties with his Authors, as the Doctor here uses. Not a word is there in *Livy* of the proceeding's being immediately over-ruled, and not suffered to have the least effect. On the contrary, that it had some effect seems intimated by these words of the Historian, *tribu moverunt, octuplicatoque Censu Ararium fecerunt. Quam rem ipsum ingenti animo tulisse ferunt, causam potius ignominiae intuentem, quam ignominiam.* The multitude, indeed, much pleased with the new Law, were greatly enraged at the Proceedings of the CENSORS against *Mamercus*, and would perhaps have tumultuously insulted them, if he had not employed his Influence to hinder it : but the People, except in *Comitia*, could not undo the Act of the CENSORS : and there is not the least intimation of a General Assembly, held for that purpose. Nay, there is some reason to think that *Mamercus* was not fully restored to his Rank and Privileges, but by his nomination to the Dictatorship, eight years after. For there were no new *Censors* in the interval, to restore him : and *Livy* seems to say, that he owed his Restoration to the need his Country had of his service. A *Cornelius* Dictatorem *Mamercum Emilium* dixit, et ipse ab eo magister Equitum est dictus : adeo, SIMUL fortuna Civitatis virtute verâ eguit, nihil censoria animadversio effecit [fortasse effecit] quominus regimen rerum ex NOTATA indignè domo peteretur. Lib. 4. cap. 31. The Doctor, in citing this passage, omits the words *simul fortuna Civitatis virtute verâ eguit.*

p. 68.

into

Vide supra,  
p. 228. 229.  
230.

into the Senate; which has been already considered: and then the affront which the *Censors* put upon *Mamercus Æmilius* (of which see in the last note.)

Vide supra,  
p. 226. 231.  
232. 233.

A few pages after, he speaks of the *Lectio* made by *Fabius Buteo* of 177 *Senators*; and of the Creation of 300 *Senators* by *Sylla*; both which Facts have been likewise considered.

Treat. p. 78.

"Now from all these facts and testimonies (says the Doctor) we may collect what was the proper part of the *Censors* in the affair of creating *Senators*. For in the ordinary way of making them, they had nothing more to do, than to enroll the names of those, who had born the public offices, since the last Call or Review of the SENATE: and to degrade them, was to leave them only out of the Roll.—But that they had no right of creating them, is plain from the case of the *Flamen Dialis*\*, who, upon the opposition made to his claim, did not

Treat. p. 47.

\* "The *Flamen Dialis*, or Sovereign Priest of *Jupiter*, revived [A. U. 544] an ancient pretension to a seat in the Senate, in right of his office; which, by the indolence of his Predecessors, had not been claimed or enjoyed for many generations. The *PRÆTOR* rejected his claim, nor would suffer him to sit in that Assembly: but upon his appeal to the *Tribuns*, that is, to the People, his right was confirmed, and he was allowed to take his place as a Senator [Livy, lib. 27. cap. 8.] This case shews, that the Privilege of the Senate might be annexed to an office without any notice taken of it by the Historians, for we have not the least hint from any of them of the origin of that *Flamen's* right," [and from the whole story it is probable, that he had no right; *magno assensu Patrum Plebisque, Flaminem in Senatum introduxerunt; omnibus ita existimantibus, magis sanctitate vitæ, quam Sacerdotii jure, rem eam Flaminem obtinuisse*] "nor any mention of him, as a Senator, but on this very occasion: though, by the manner of his Appeal, the Claim seems to have been grounded on some old grant from the People."

Essay, p. 110.

Dr. Chapman seems to think otherwise: For having (in his text) taken notice, that the *Flamen* proved his Right to a Seat in the Senate, "to have been annexed to his office, at the same time with the *Prætecta* and *Curule* chair," he from hence (in a note) collects, that "this Right of the *Flamen's* [claimed A. U. 544] must have been as old as the Reign of *Numa Pompilius* [i. e. above 500 years old] as appears (says the Doctor) from the following words of *Livy*, lib. 1. cap. 20. *sed quia in Civitate bellicosa plures Romuli quam Numæ similes reges putabant fore, iturosque ipsos ad bella; ne sacra regie vicis deferrentur, Flaminem Jovi assiduum Sacerdotem creavit, insignique eum veste et curuli regis sella adornavit.*"

I shall not dwell upon this Story longer than to observe, that not much can be inferred, for the service of the Doctor's Hypothesis, from the *Flamen's* not seeking redress from the *CENSORS*; because, at this time, there were none.

It



"not seek redress from the CENSORS, but the Tribunes; that is,  
 "from the People, as the Sovereign Judges of the affair. Lastly,  
 "the Description given by Cicero, of the Censorian jurisdiction in  
 "all its branches, is exactly conformable to my Hypothesis: for he  
 "assigns them no part in the creation of Senators, nor any other  
 "power over that Body, than what flowed from their right of  
 "inspecting the Manners of all the Citizens. Let them govern  
 "(says he) the morals of the City, and leave no stain or scandal  
 "in the SENATE. [Mores populi regunto: probum in Senatu  
 "ne relinquunto. Cic. de Leg. 3. 3.]"

As the Doctor thinks, that the whole difficulty of the present  
 Question consists in the great power and authority delegated to the  
 CENSORS in the affair of creating Senators, I have, by the fore-  
 going Extracts from his Treatise, given, if not the whole of his  
 argument (concerning the limitation of the Censorian powers)  
 yet, to the best of my understanding, the Cream; which, who-  
 ever considers it, must, I imagine, perceive to be extremely thin  
 and dilute; that the Doctor's Facts fail him, and his Testimonies  
 amount to nothing.

Leaving all (testimonies, facts, and arguments) to the judgment  
 of the Reader, I shall only take notice, that to what is said of  
 the CENSUS and the CENSORS, by both the Doctors, certain  
 Objections may be made, of which they seem not to have been  
 aware.

According to these two learned Writers,

1. In the beginning of the Commonwealth, and so long as the  
 CONSULS had the charge of holding the CENSUS, no man became  
 a complete Senator, till enrolled by them; nor, after the institu-  
 tion \* of the Censorship, till enrolled by the Censors.

\* A. U. 310.

2. These Enrollments were made at the time of the CENSUS,  
 and were a part of that business.

Now, these things supposed, certain difficulties naturally arise:

It was after this affair, that one of the CONSULS held the Comitia for electing  
 CENSORS. Per eos dies et Censoribus creandis Q. Fabius Consul Comitia habuit.—  
 Senatus lectionem contentio inter Censores de Principe legenda tenuit.—Quum diu  
 certatum esset verbis, concedente collega, lectus a Sempronio Princeps in Senatu  
 Q. Fabius Maximus Consul: inde alius lectus Senatus, acto præteritis &c. Liv.  
 lib. 27. cap. 11.

How were the Vacancies of the Senate supplied, in those seventeen years, during which, LIVY tells us, no CENSUS was held; a neglect which occasioned the Creation of the CENSORS?

If *fourteen* annual Magistrates would yield a competent Supply (as Dr. Middleton thinks \*) and *but a competent Supply*, to the ordinary Vacancies of the SENATE, there could not have been, at the end of those *seventeen* years, members † enough to make a House. Of 300 members, the Senate's proper number, it would have wanted 238, according to Dr. Chapman; and, according to Dr. Middleton, it would have wanted the same number of complete members, such as had a right both to *vote*, and to *speak*.

† A. U. 361. So likewise (after the Institution ‡ of the CENSORS) there was an Interval of *fifteen* years between the eighteenth Lustrum and the nineteenth ||, and of *fourteen* years between the nineteenth § A. U. 376. and the twentieth §. How then, and by what Authority, were the Vacancies of the Senate filled up, in these Intervals? It would seem, that Dr. Chapman, who, I think, allows not the inferior Magistrates even to *come into* the House, after the expiration of their magistracy, till enrolled by the Censors, must have some difficulty to answer this Question. Dr. Middleton indeed will not be so hard pressed with it; because he gives the Inferior Magistrates *an immediate right to the Senate*, and, after the expiration of their office, *an actual admission into it, with a right of suffrage*, though he allows them not the privilege of *speaking* till made complete Senators, by being put upon the Roll of the CENSORS. But then I cannot see, how the Doctor will be able to confute the express testimony of Valerius Maximus, who says, that *none of those who had born the public offices could have ADMISSION INTO THE SENATE, but by that ONE way, the being put on the CENSORS Roll*.

Treat. p. 159. † Dr. Middleton seems to think, that *an hundred* members was the proper number required in all cases, when the Senate consisted of *three hundred*.

And Dr. Chapman on this head writes thus:

Essay, p. 219. “That a precise number of members was requisite to make a House, is evident from a variety of Authorities; and yet what that was, at least in the earlier times of the Republick, is very uncertain. The first instance to be met with, of the presence of a determined number being insisted on, in order to validate a decree, is no earlier than the 565th year of the City; and then, in the case of authorizing the Celebration of the Bacchanalian Rites, the number required was one hundred, or a third of the Complement of the House, as it then stood.”

Liv. lib. 39. cap. 18.

Quo



QUO UNO MODO HIS QUI JAM HONORES GESSERANT ADITUS IN CURIAM DABATUR. Vide supra, p. 239.

This express testimony the Doctor will unavoidably have to struggle with, even though we should admit his notion of *indirect* Elections of Senators, by the People; but, I think, it has been fully demonstrated, that the Tribunes and Plebeian Ædiles had not, in the earlier ages of the Commonwealth, either *an immediate right to the Senate*, or *a right to be enrolled by the Censors at the next Lustrum* \*.

It will probably be expected, that I finish the present Discussion with offering my own *Conjectures* on the point in question: I say *Conjectures*; for though I am convinced, beyond a doubt, that the *Hypothesis* or *Conclusion* of the two learned Doctors is totally groundless, yet I pretend not to have any thing certain and satisfactory, any thing better than Conjecture, to put in the place of it; nor indeed any thing very different from Lord Hervey's Opinion.

WE have seen, that, by the Concession of Dr. Middleton to Lord Hervey, the LATIN WRITERS do constantly speak of the Creation of Senators as a Branch of the Royal Prerogative. Vide supra, p. 78. 191. 202.

The Doctor indeed is of opinion, that we ought to prefer the single Testimony of Dionysius to the Testimonies of all the *Latine* Writers; but he has offered no good reason for this Preference; and I think I have offered many good reasons, why the Greek Rhetorician, when his Tales are not confirmed by *Latine* Authority, ought to be considered as a writer of Romance, not of History: And it has likewise been observed, that the Doctor has not, in favour of his Notion, even the Testimony of Dionysius; for this Writer, though he pretends, that Romulus, in two instances, Vide supra, p. 116.

\* The Testimony alone of Varro, in *A. Gellius*, (14. 8.) seems sufficient to overthrow the Doctor's Notion of the TRIBUNES right to the Senate in the early ages of the Republic. *Nam et Tribunis Plebis Senatus habendi jus erat quanquam Senatores non essent, ante Atinium Plebiscitum. A. U. 623.* The best argument used by the Doctor to invalidate this Testimony, is, that it is inconsistent with his Hypothesis. Vide supra, p. 216. Treat. p. 45.

To what has been offered, in the foregoing pages, against the Doctor's Notion, may be added, the improbability of the Tribunes having a Right to the Senate by virtue of their office, from this consideration, that the same men were, in many instances, rechosen to the Tribunate for many years together; which would have been a violation of the Law, which declared, that no Senator should be elected a Tribune. Vide supra, p. 219.

remitted the choice of the Senators to the People, yet never attributes to the People a Constitutional Right of creating Senators.

ADMITTING then, upon so good Authority as that of *all the Latine Writers*, that the Choice and Nomination of the *Senators* depended wholly on the Will of the *KINGS*, must we not say, that the *FIRST CONSULS* enjoyed the same Prerogative? For it is agreed, that they succeeded to the Kingly Power.

There is nothing to oppose to this but the words *Jussu Populi* in the speech of *Canulcius* the Tribune; and it has, I think, been proved, that those words can relate but to that one *Lection* of Senators, made by *Brutus* at the Commencement of the Republic: and it has been observed, that there was a particular reason \* why the consent and approbation of the *People* should be asked on that occasion. [See above p. 55. 56. 57. 224. 225.]

As to the *CENSORS*, I conjecture, that they did not, *at first*, perform the part which had belonged to the *CONSULS* in the affair of making and unmaking Senators. For supposing that part to have been nothing more, than *the putting on the Roll of the Senate the names of those persons whom the People had either directly or indirectly chosen to be members of that highest order, and the omitting to enroll, and thereby excluding from the Senate, such of the elected, whose conduct they disapproved*, how can we believe that the office, at its first institution, would have been despised (as *Livy* tells us it was) by the *Grandeess*—*à primoribus Civitatis spectus honor?* *Liv. lib. 4. cap. 8.*

May we not with good appearance of reason believe, that the *Censors* for some time, even after they had the charge of *enrolling* the Senators, were but a kind of deputies to the *Consuls*? Is not this countenanced by the case of *Appius Claudius* and his Colleague, where we find, that the *CONSULS* took upon them to cancel the List of Senators, which those *CENSORS* had made?

And, on this supposition, the difficulty, arising from the long intervals between one *CENSUS* and another, vanishes. We have here a ready Answer. When there were no *CENSORS* in the State, the *CONSULS* filled up the Vacancies of the Senate, as they had used

\* It was an almost entirely new Senate; and the Senate was now made to consist of 300 members instead of 200, its complement in the times of *Tarquinius Priscus* and *Servius Tullius*.



to do, before the Institution of that Magistracy. And here I must observe, that though the two Doctors assert, that to make a Roll of the Senate was *always* a part of the business of the CENSUS, yet of this they produce no proof.

From LIVY's account of the *Lection* made by the Dictator, Fabius Buteo, whom the Senate appointed to perform the function of Two Censors, in supplying the Senate with new members, it would seem, that it was, at that \*time, become the Custom, for the CENSORS, *freely* to name those persons, who had born the Honours of the City, to fill the Vacancies of the August Assembly: and *probably* this Custom had prevailed ever *since* (most certainly not *before*) the time † when the Plebeians obtained access to the Highest Magistracy: But it would likewise seem, from what the Dictator said and did ‡, on occasion of that extraordinary Lection, that the CENSORS, if they were under any obligation to put the late Curule Magistrates on the Roll, still they were under no obligation to place them there according to the degrees of their Honour, or the order of their Creation [*ut quisque eorum primus creatus erat*]; for the Dictator intimates, that his doing *this* was by his own free Choice [*se—ita in demortuorum locum sublekturum, ut ordo ordini, non homo homini praelatus videretur.*] And, as to the Inferior Magistrates, it would seem, that they were not || comprehended in the description, *Qui eos magistratus gessissent unde in Senatum legi deberent*; and that the Censors were entirely at liberty to enroll them among the Senators, or to pass them by.

\* A. U. 537.

† A. U. 387.

‡ Vide supra, p. 227. 228. the note.

Liv. lib. 22. cap. 49.

|| Vide supra, p. 234. Liv. lib. 23. cap. 23.

I shall conclude with observing, that the words of Livy, when he speaks of the first Creation of Censors, do plainly import, that the power of those Magistrates was not the same at the first, as afterwards; and do seem to import, that the Censors, in the height of their power, did not act ministerially to the Prerogative of the People, in their Lections of Senators; did not merely enroll the names of such persons as the People had chosen, but did themselves chuse the members of the Senate. *Idem hic annus Censuræ initium fuit; rei à parva origine ortæ, quæ deinceps tanto incremento aucta est, ut morum disciplinæque Romanæ penes eam Regimen, SENATUS, EQUITUMQUE CENTURIÆ,—SUB DITIONE § EJUS MAGISTRATUS—ESSENT.*

§ That *sub ditione* imports something more, than the Right, the Censors had, of

Wide supra,  
p. 75.

Essay, p. 75.

of inspecting the manners of the Senators, and punishing, by expulsion from the House, those whose unworthy Conduct was notorious, may (I imagine) be reasonably inferred, not only from the force of the word *ditio* in most instances, but from the following Passage in Cic. (de Leg. 3.) which is urged, to the same purpose, by the ingenious Author of the DISSERTATION &c.—*Ex iis autem qui magistratum ceperunt, quod Senatus constituitur, populare est sane neminem in summum locum, nisi per populum venire, SUBLATA COOPTATIONE CENSORIA.* “But this Passage (says Dr. Chapman) is universally owned to be very corrupt; *Senatus consulto vel consultu* occurs in all the MSS., as does *popularem* instead of *populare*. *Sublata est cooptatio Censoria* is to be met with also in one MS., and these words, probably, were the beginning of another Sentence, and not the conclusion of the former; at least we shall be at a loss to account otherwise, for the connection of what follows, *sed præsto est hujus vitii temperatio, quod Senatus lege nostra confirmatur auctoritas.*”

The Doctor seems to have been rightly aware, that it is of little importance, with regard to the point in question, whether the Passage be corrupted or not in the particulars he mentions; (if it be certain that Cicero wrote either *sublata cooptatione Censoria*, or *sublata est cooptatio Censoria*) and therefore adds—“Again, if we should admit these to be the very words of Cicero, they will not still imply, what Turnebus [who, the Doctor says, altered the words] would have them. He contends, that the word *cooptation*, signifies an Election made without the concurrence of the People; but then how comes it applied by Livy (lib. 5. cap. 10.) to the election of Tribunes, or by Cicero himself (Orat. pro M. Cælio) to a popular Election into the Senate of Puteoli?” To this a reply may be made by another Question: How comes Livy so manifestly to employ the word *cooptari* to express an election of magistrates, without the People's concurrence? *Quinque tribunis plebis creatis, quum præ studiis apertè petentium novem tribunorum alii candidati tribus non explerent, concilium dimisit [Duilius] nec deinde comitiorum causâ habuit. Satisfactum legi aiebat, quæ, numero nusquam præfinito tribunis, modò ut relinquerentur sanciret; et ab iis qui creati essent, cooptari Collegas juberet, &c. Liv. lib. 3. cap. 64. See also cap. 65.*

*Inter delectum tributum, et occupatos animos majorum rerum curis, comitiis tribunorum Plebis numerus expleri nequivit. Pugnatum inde, in loca vacua ut Patricii cooptarentur. &c. Lib. 5. cap. 10.*







